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OUTDOOR ADVERTISING IN URBAN COMMUNITIES  
AND ALONG RURAL HIGHWAYS

A THESIS

Presented To  
the Faculty of the Graduate Division  
Georgia Institute of Technology

In Partial Fulfillment  
of the Requirements for the Degree  
Master of City Planning

By  
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OUTDOOR ADVERTISING IN URBAN COMMUNITIES  
AND ALONG RURAL ROADSIDES

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## CHAPTER I

### INTRODUCTION

The regulation of outdoor advertising has been a controversial subject for many years. At the one extreme, there have been some outdoor advertising companies who maintained that there should be no restrictions on the location of billboards. At the other extreme, there have been those who would eliminate all outdoor advertising signs, arguing that they cause traffic accidents, ruin the natural beauty of our cities and countrysides, and serve no useful purpose beyond the profit of the advertising companies. Neither of these extreme viewpoints has prevailed.

Outdoor advertising has become accepted as a legitimate business that performs a useful and needed service in the marketing of the mass production goods upon which our economy is dependent. At the same time it has been recognized that the outdoor advertising business, like most other businesses, requires regulation in the interest of society as a whole.

It is the intent of this study to examine the problem in an objective manner; to analyze the factors which are peculiar to the outdoor advertising business and may need to be regulated; to outline and evaluate the various methods of regulation in use; to trace the progress of such regulations

through judicial decision; and, finally, to recommend a course of action which will be equitable to all concerned and will lessen the problem in the future.

### The Outdoor Advertising Media

Current literature is not always clear about the range intended when using the term outdoor advertising. No standard nomenclature for the various types of advertising is in general use. Broadly speaking, outdoor advertising includes all the forms of advertising, either pictured or written, which are displayed to people out-of-doors.

Outdoor advertising structures may be classified into two general categories: separate-use and accessory-use signs. The separate-use sign generally advertises a product or service which has no direct relation to the actual or permitted use of the land on which it is located, whereas, the accessory-use sign relates directly to the premises.

Within each of these broad classifications, there are many variations. As might be expected, some types of signs present more problems than do others. With the exception of the random sign, the signs listed under the separate-use classification have been given the names adopted by the Association of National Advertisers, Incorporated.

### Separate-Use Outdoor Advertising Signs

Twenty-four sheet poster.--The twenty-four sheet poster is a



standard-size panel twelve feet in height and twenty-five feet in length which is generally mounted on a structure three to four feet above the ground or on top of a roof. It is the most widely used structure and is better known as the "billboard" or "poster panel."

Three-sheet poster.--The three-sheet poster is a smaller edition of the twenty-four sheet poster with outside dimensions eight feet-seven inches high by four feet-ten inches wide. It is generally mounted on the walls of buildings in urban areas and near to the retail outlets where it serves as a reminder to passing pedestrians.

Spectacular.--The spectacular is a larger permanent electric sign with an individualized design including special lighting and action effects. It is generally located in downtown business areas.

Painted bulletin.--The painted bulletin is a structure somewhat larger than the twenty-four sheet poster, ranging up to eighteen feet in height by seventy-two feet in length with the message painted on the face of the structure rather than pasted.

Painted wall.--The painted wall, as the name implies, is painted on walls of buildings, generally in shopping areas. Due to the nature of the walls available, these signs vary widely in size.

Random sign.--The random sign is any separate-use outdoor ad-

vertising structure which is not similar to one of the above named signs in both dimension and use. These signs are more widely known as "snipe signs." The two most common forms of random signs are the small signs located on the front wall of a retail business, advertising a single product sold therein (soft drink signs on the front of a corner grocery), and the small roadside sign advertising a business or service located a few miles further along the road (John's Truck Stop - Ten Miles).

#### Accessory-Use Outdoor Advertising Signs

Name plate.--The name plate is a small lettered plate or sign pertaining only to the name or the name and professional occupation of the resident.

Identification sign.--The identification sign displays only the name and use of a public or quasi-public building, club, lodge or institution, or it may display the name and address of an apartment house or hotel.

Real estate sign.--The real estate sign advertises the rental, lease, sale or contemplated improvement of the property on which it is located.

Bulletin board.--The bulletin board is a structure that gives the name of a church, school or other institution, lists the services or activities carried on therein and gives the name of the minister, the principal, or the head of the institution.

Business sign.--The business sign is any structure or device which gives the name or character of the business conducted on the premises. It may also advertise a service or product rendered or produced on the premises. Business signs may be flat, projecting, vertical or horizontal and may be displayed from a wall, pole, roof or the ground; however, the wall is the most commonly used location.

#### Projecting or Overhanging Signs

The study of overhanging or projecting signs will be excluded from this report entirely. The variety of overhanging signs and their corresponding regulations is sufficiently complicated to warrant their being the subject of a special study. Furthermore, these signs are not a legal problem to the community in that there is no inherent right to maintain an encroachment over the public way. This point has been well settled in a number of court cases. One recent case is People v. City of Chicago, 112 N. E. (2d) 616 (1953), in which the court upheld an ordinance regulating the projection of signs over public property. The court ruled that the right to erect and maintain an encroachment over a public way is not inherent and, even when permitted, the right may be withdrawn at any time.

#### Early Advertising and Regulation

When Johannes Gutenberg invented printing from movable

type in 1450, the concept of mass communication changed completely. Wide commercial application became practical and the modern use of advertising was initiated with the handbill.

During the seventeenth and eighteenth centuries, another form of advertising made its appearance in the form of the outdoor sign. Places of business, such as bootmakers, taverns, blacksmiths and apothecaries identified their shops with signs which were symbolic of both trade and firm.

When Alois Senefelder perfected the lithographic process in 1796, he provided the means for merging these earlier forms into what became known as the illustrated poster. At first the posters were attached to walls and fences, but the desirable locations soon were covered and billposters began to erect their own structures. By 1896, the initial "boards" had been replaced with structures of matched lumber and tongue and groove construction. During this same period improved roads were being developed throughout the country.

The automobile made its entrance on the American scene at approximately the turn of the century. Paved highways soon followed and within a few years a network of roads had been established across the country. As the number of travelers increased, a ready-made market was created for the outdoor advertising industry. Soon the roadsides broke out in a rash of signs and billboards. Such popular items as Maine clams,

Georgia pecans, and Florida citrus fruits were advertised across the countryside wherever the automobile traveled.

Early in this century community officials, in response to the heated demands of the people, began to take action against the advertising signs which were increasing in number every day. Numerous ordinances were passed regulating or prohibiting outdoor advertising. Because they had been hastily drawn and in most cases were based primarily on the esthetic viewpoint, the courts quickly nullified such regulations as being outside the scope of the police power. Evidently these setbacks did not lessen the public fervor because the people continued to protest.

In 1911, the case of St. Louis Gunning Advertising Co. v. St. Louis, 235 Mo. 99, 231 U. S. 761 (1913) was decided. This case marked the turning point in the attitude of the courts toward outdoor advertising regulation. The court upheld an ordinance which limited the height of billboards to 14 feet and their maximum area to 500 square feet, required that they be erected 15 feet back of the street line and that their ends be not nearer than six feet to any building or side line of the lot, nor nearer than two feet to any other billboard, and that there be a clearance of four feet between their lower edge and the ground. The court made it clear that the police power might be exercised to protect community health, safety, and morals.

In addition, the court set a precedent by recognizing that billboards, wall signs, and roof signs were in a class by themselves, saying:

We are also of the opinion that those cases which hold such ordinances to be void (ordinances which classify billboards, wall signs and roof signs separately from other structures) because they were class legislation, are also unsound, for the reasons before stated, that billboards . . . belong to a class by themselves, and when they alone are named in an ordinance, there are no other structures of similar character to be found in the city which could be reasonably included with them.

Another notable landmark in the history of efforts to restrain the outdoor advertising industry was recorded with the decision of the Supreme Court of the Philippines in Churchill v. Rafferty, Collector of Internal Revenue, 32 Philippine Reports 580 (1915). The decision upheld a statute which empowered the Collector to remove billboards if they were objectionable to the sight, as a proper function of the police power. It was stated that objects may be as offensive to the eyes as to the ears and nose (or even more so). The opinion was also put forth that the success of billboard advertising depends not so much on the use of private property as it does on the use of the traveled way.

Probably the most widely quoted regulations and subsequent litigation developed in Massachusetts. A constitutional amendment in 1918 specified that: "Advertising in public ways, in public places and on private property within public view

may be regulated and restricted by law."<sup>1</sup> In 1923, following a statute authorizing the Department of Public Works to license billboards, a regulation was adopted that prohibited billboards in scenic areas, within 150 feet of an intersection, within blocks in which the majority of the buildings are residential on both sides of the street, and within 50 feet or other distances of any highway, depending upon the size of the billboards.

The combined billposting companies of the United States joined forces and secured an injunction and a lengthy court battle got underway. Finally, after years of litigation, a decision was handed down in the case of General Outdoor Advertising Co. v. Department of Public Works, 289 Mass. 149 (1935). The Supreme Court of the State held that the regulations being contested were designed to promote safety of travel upon the highways, to promote enjoyment of public parks, to shield highway travelers from business appeals, to protect property from depreciation, and to make the state attractive to visitors, and that they were therefore a proper exercise of the police power.

One of the most important results of this case was the recognition that billboards were a different use from accessory-use signs, the court stating:

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<sup>1</sup>Constitution of Massachusetts, Article 50.

The rules, regulations and statutes are not applicable to signs or advertising devices indicating solely the person occupying, the business transacted on, or the sale or letting of, the premises. They relate alone to advertising carried on as a business.

Meanwhile, a great popular movement to abolish outdoor advertising was slowly getting underway. Many citizen organizations carried on educational campaigns to spread the idea. The American Civic Association, under the leadership of Dr. J. Horace McFarland, was a pioneer in this effort. Another was the late Mrs. W. L. Lawton who was instrumental in the founding of the National Roadside Council in 1923 and the National Committee for Restriction of Outdoor Advertising in 1924. Mrs. Lawton conducted roadside surveys throughout the United States, the results of many having been published in the American Civic Annual.<sup>2</sup>

In the late twenties and early thirties, a host of material was written and published on the subject of outdoor advertising regulation in an attempt to popularize the movement. These articles appeared in such well known publications as: American Planning and Civic Annual, Civic Comment, Planning and Civic Comment, Nature Magazine and The American City.

Through these combined efforts, the movement reached a great number of people. As a result, numerous roadside clean-up campaigns were organized and conducted, generally by

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<sup>2</sup>American Civic Association, American Civic Annual, Edited by Harlean James, Harrisburg: Mount Pleasant Press, 1930-1933, Vols. 2 - 5. See also other early editions.



women's groups, such as garden clubs and civic associations. Their first efforts were directed towards cleaning up the rights-of-way. This was followed with letter-writing campaigns urging manufacturers not to purchase space on the outdoor boards. In a few extreme cases, they encouraged the boycotting of products that were advertised outdoors.

Pennsylvania reported that 24,834 illegal signs were removed from eight highway districts and that 7391 additional signs were removed after conferences with property owners. A total of 32,225 signs came down during a two-week period in 1930.<sup>3</sup> The County Conservation Committee of Loudoun County, Virginia, removed more than 1,500 billboards and signs, 1,000 of which had been erected illegally. The removal of the remaining 500 was accomplished by the committee's interviewing property owners along the highways and securing their cooperation in excluding outdoor advertising from their respective properties.<sup>4</sup> Several thousand signs were reported removed from along New Jersey highways after the passage of an act regulating and taxing billboards.

When confronted with this expanding movement, the outdoor advertising companies began to encourage voluntary cooperation between the opposing groups. Generally the cooperative

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<sup>3</sup>American Civic Association, "Roadside Improvement Notes," Civic Comment, No. 31, November - December, 1930, p. 20.

<sup>4</sup>Ibid., No. 32, January-February, 1931, p. 21.

movement was unsuccessful, in large part due to the fact that many sign companies did not belong to the association and refused to take part in the voluntary cooperation movement.

Since this period of aggressiveness against outdoor advertising, popular opposition seems to have lessened considerably. Both sides seem to be going more slowly and neither appears anxious to get into court. California has fostered several county zoning ordinances which strictly regulate outdoor advertising along their major highways. Massachusetts has established an outdoor advertising authority under an amended law passed in 1946. Otherwise the situation remains fairly static. State laws are frequently amended, but the character of the changes has not been important.

## CHAPTER II

### THE OUTDOOR ADVERTISING CONTROVERSY

It is clear from the development of outdoor advertising and its subsequent regulation, that there are conflicting opinions about the desirability of this advertising medium.

The opinions of people actively involved in the outdoor advertising controversy vary from one extreme to the other. One small group would completely abolish signs and billboards from our roadsides, thereby virtually eliminating the outdoor advertising industry. Another small group would erect as many signs as possible at every available location in both urban areas and along rural highways. Fortunately, between these two extremes are found the great majority of people. They consider outdoor advertising a legitimate business which should be permitted subject to reasonable restrictions which will make its use acceptable in our society.

There is general agreement that outdoor advertising signs (in the separate-use classification) should not be permitted in residential districts or in scenic areas. Likewise, there is general agreement that they should be permitted in commercial and industrial districts. The primary areas of current controversy are the retail shopping center and the

rural roadside. The problems in both of these areas have not been resolved in an acceptable manner. Reduction of the area of disagreement over the nature and extent of controls requires an evaluation of outdoor advertising and of the arguments for and against its regulation.

### The Outdoor Advertising Operation

For the purpose of discussion, outdoor advertising will be divided into three types of operations: (1) the organized industry; (2) individual advertising companies not belonging to any association and individuals and businesses that erect random signs, both of which are frequently characterized as "fly-by-night" operations; and (3) business owners who erect accessory-use signs, usually on the fronts of their buildings.

### The Outdoor Advertising Industry

The outdoor advertising industry is composed largely of members of the Outdoor Advertising Association of America, Incorporated. Its membership makes up approximately 90 per cent of the outdoor advertisers in the United States. The members are usually separate companies which operate in a part of or throughout a city, county or state, depending upon the size of the individual business.

The Outdoor Advertising Association of America, Incorporated, recommends standards for display structures, establishes standard dimensions and layouts for posters,

guides plant operators in determining the number of poster panels necessary for adequate coverage and recommends standards of public policy.

To be a member of the association, the individual companies must accept and follow organizational standards and policies. Probably the most important document which has been adopted is the statement of governing policies which requires:<sup>1</sup>

1. Members of this Association will erect and maintain advertising structures only:

- a. upon property leased or owned by the members;
- b. in accordance with Association standards of construction and maintenance;
- c. in such manner as to recognize and respect the public interest in
  - (1) natural scenic beauty;
  - (2) parks, historical monuments and shrines, and their immediate approaches;
- d. upon property which may be employed for business, commercial or industrial uses.

2. Members of this Association will display advertising copy only:

- a. which conforms to all requirements of law;
- b. which is truthful in every respect and is in accord with the moral standards of the community.

3. Members of this Association will actively support religious, educational, charitable, civic and governmental programs by making outdoor advertising available for such appeals in the interest of community and nation.

Traffic Audit Bureau, Incorporated.--An important function which is necessary for the continued effectiveness of the out-

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<sup>1</sup>Outdoor Advertising Association of America, Inc., Governing Policies, Chicago: Outdoor Advertising Association of America, Inc., 1956, pp. 4-5.

door advertising industry is performed by the Traffic Audit Bureau, Incorporated. The "Bureau" furnishes advertisers and advertising agencies with impartial information on outdoor advertising circulation. The bureau analyzes plant locations (a plant refers to the physical properties of a local outdoor advertising company) for the purpose of rating the value of the individual panel positions and circulation. These ratings are published and distributed to both advertisers and their advertising agencies.

Outdoor Advertising, Incorporated.--Even an advertising company needs to sell its services and this is done for hundreds of plant owners through Outdoor Advertising, Incorporated. This is the organization which sells the medium to prospective advertisers and agencies on a national or regional basis. Outdoor Advertising, Incorporated, prepares presentations demonstrating the medium and its application, plans national or regional advertising campaigns, furnishes cost and space estimates for all types of outdoor advertising, creates copy and art ideas and provides assistance throughout advertising campaigns.

National Outdoor Advertising Bureau, Incorporated.--One other agency also widely used is the National Outdoor Advertising Bureau, Incorporated. In essence, it is a cooperative outdoor advertising department maintained by several hundred advertising agencies to facilitate placing and checking an outdoor

campaign for its clients.

Plant operations.---The "plant" is the heart of the outdoor advertising business because it is made up of the actual structures that the company maintains and on which it places its posters. The plant manager is responsible for surveying the market to determine appropriate areas for the location of panels. Then he must either purchase the sites or obtain leases for his panel locations. Once the manager has acquired a right to the properties, his primary concern is in erecting standard type advertising panels and maintaining them in good condition.

The advertising business is drawn primarily from two sources. Probably anywhere from 65 to 85 per cent of the business which the plant owner receives is the result of its having been sold to national advertisers by Outdoor Advertising, Incorporated. Local advertising accounts for anywhere from 15 to 40 per cent of the outdoor advertising volume. However much depends upon the particular locale. Some plant operators have as much as 70 per cent of their total volume resulting from the use of the medium by local accounts. Local advertising enables the plant manager to keep all of his panels in use during that period of the year when national advertisers may be purchasing space for products of a seasonal nature.

When an advertiser purchases outdoor coverage of a market, he purchases what is known in the industry as a "showing." For example, a 100 showing includes a sufficient number of panels to give complete coverage of an entire market. Complete coverage is assumed to be obtained when the advertising message is exposed to almost everyone who is moving about in the market during a 30-day period. In certain areas, it is also possible to purchase 25, 50, 75 and 150 showings which have a total number of panels approximately equal to their ratio with the 100 showing. For example, a 25 showing would have approximately one-fourth the number of panels in a 100 showing. The 150 showing is believed to approach the maximum intensity which is practical to obtain. The Outdoor Advertising Association of America helps the plant operator determine the number of panels needed for the various showings.

It should be realized that the number of panels needed to satisfy a specified showing will depend upon the size of the market or the city in which located. In a small town, 10 panels might represent a 100 showing, whereas in a large city, the same 100 showing might require 200 panels. A further complication is introduced because all advertisers do not want the same types of locations, and it may be necessary for one plant operator to maintain several hundred panel locations in order to offer a varied number of showings.

The rates for the various showings are determined by the plant operator. Each operator determines the number of



panels to effectively cover the market. The rates will vary from one plant to another, depending primarily upon the population within the market, the intensity of the showing desired, and the aggregate land rentals for the properties on which the advertising structures are located.

### "Fly-By-Night" Operations

There is a small segment of the outdoor advertising business carried on by independent operators who do not belong to any organization or association. They do not, in most cases, put up a standard-size sign, the maintenance of their signs is lax or non-existent, and the appearance of their signs is usually not of an acceptable quality. The random signs, as previously described, generally fall into this classification as do some of the large roadside signs maintained by certain candy companies, and political announcements or posters.

### Accessory-Use Advertising Signs

As has been previously stated, accessory-use signs advertise a product or service which is located on the premises. These signs usually give only the name and the nature of the business and are most frequently found on the fronts of buildings. The signs may be erected during the construction of a building, they may be erected by the owner or proprietor at the time his business is established or an advertising company may be hired to design and erect the sign for an owner.

In any case, once the sign is in place it becomes a permanent part of the structure and is considered incidental to the primary use of the premises.

#### Characteristics of the Outdoor Advertising Business

The principal characteristics of the outdoor advertising business tend to distinguish it from any other business. The whole field of advertising is a fundamental and essential part of the mass production and distribution process. It exists because the producers of goods and services need a means of bringing their products and services to the attention of the public; and, conversely, the public needs a means of finding out about the products and services available to them. The constant flow of goods and services from producer to consumer maintains mass production and employment.

Outdoor advertising is one of the five major media for conveying messages to the public. The others are: newspapers, magazines, radio and television. In 1953 approximately \$175,000,000 was expended on outdoor advertising, which was only 2.2 per cent of the total advertising expenditures.<sup>2</sup> Although it is a small portion of the total, outdoor advertising is a sizeable business. The 1948 Census of Business listed 798 outdoor advertising establishments with annual gross receipts of \$114,881,000, which is an increase of \$68,000,000

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<sup>2</sup>United States Department of Commerce, Bureau of the Census, Statistical Abstract of the United States, Washington: Government Printing Office, 1953, p. 877.

over that reported in 1939.<sup>3</sup> In addition, in 1948, a payroll of \$38,405,000 was distributed among 10,567 employees.

Outdoor advertising is an important advertising medium because it is the only one that reaches people out-of-doors. In fact, the primary reason for the existence of outdoor advertising is this ability to deliver an advertising message to prospective purchasers while they are out-of-doors. Many companies which distribute their products to a national market depend upon the outdoor medium as an indispensable part of their total advertising program.<sup>4</sup> The distinctive role of outdoor advertising may be described as follows:

Memory function.--The simplicity of a well-executed poster can produce an image which is likely to remain in the mind for a considerable period of time. While the viewer may not be aware of the impression, indeed, may not be conscious of the fact that he has looked at an advertising poster, the particular product being advertised is likely to register over and over again in his subconscious mind.

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<sup>3</sup>United States Department of Commerce, Bureau of the Census, United States Census of Business, Service Establishments, Washington: Government Printing Office, 1948, Vol. 7, pp. 1.09, 13.02.

<sup>4</sup>Association of National Advertisers, Inc., Essentials of Outdoor Advertising, New York: Association of National Advertisers, Inc., 1952, pp. 31-32.

Advantageous sales location.--It delivers a message at the time the prospect is most likely to be conscious of his need for the product or service advertised. Automobile manufacturers and gasoline marketers utilize this principle constantly in placing their advertisements along major arteries and highways.

Reminder.--Outdoor advertising serves a reminder function also. For this purpose it may back up or reinforce other media or vice versa.

Market coverage.--Outdoor advertising is purchased to cover a market and deliver its message at points of high traffic concentration. Because all kinds of people ride in automobiles, it is possible for outdoor advertising to reach people in all income groups and in all areas of the market. A portion of the people within any city passes the same sign locations every day. Others move about the city and are exposed to different posters at various times during the month.

Moving market.--Outdoor advertising delivers its message to a moving market. This is especially important because it requires a type of message which will attract and be effective at just a glance. It must speak quickly, memorably and repeatedly.<sup>5</sup>

#### Arguments for and against Regulation

In order to understand and evaluate the arguments for

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<sup>5</sup>Ibid., p. 30.

and against the regulation of outdoor advertising, it would seem logical to analyze the regulations in terms of their goals. Heretofore, the arguments have generally given primary emphasis to those points which were believed to be most acceptable to the courts. Whether they were fact or fiction seemed unimportant. Norman Williams, Jr. in his Planning Law and Democratic Living<sup>6</sup> summed up the situation very well:

In order to get planning decisions and regulations upheld by the courts, which are usually unknowledgeable about the problems involved and often tend to be hostile, primary emphasis in planning litigation has, naturally enough, usually been placed on whatever arguments seem likely to make the particular regulations involved easiest to uphold. Thus, in zoning cases, no matter what the real problems are, it is generally argued that the regulations under attack were really concerned with considerations of public health and safety. Moreover, it is customary also to invoke 'the general welfare,' in a way which seems to assume that this is something definite and meaningful, and also something quite different from health and safety. It is rare that the particular problems affecting health, safety or other aspects of welfare are spelled out, analyzed and evaluated.

The principal aims of outdoor advertising regulation are:

1. Protection against automobile traffic hazards,
2. Protection against falling signs or structures and electrical defects,
3. Protection of property rights,

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<sup>6</sup>Norman Williams, Jr., "Planning Law and Democratic Living," Law and Contemporary Problems, Land Planning in a Democracy, Vol. 20, Spring, 1955, p. 318.

4. Protection of health and morals,
5. Protection of light, air and open space,
6. Protection against esthetic nuisances.

Probably every outdoor advertising concern would agree that these are worthy objectives for the regulation of any activity. The dispute occurs because there is a difference of opinion as to the extent of regulation needed to obtain these goals. Perhaps an individual analysis will make the issues clear.

#### Protection Against Automobile Traffic Hazards

The popular arguments which have been developed in reference to outdoor advertising and automobile traffic hazards are not entirely based on facts. Generally, the reasoning used by the proponents of outdoor advertising regulation is that a person operating a vehicle cannot give his full attention to driving if his eyes are constantly diverted to signboards along the roadway. The familiar example is that of an automobile traveling at the rate of 60 miles per hour. If the driver's eyes are diverted for three seconds, the vehicle will have traveled a distance of 264 feet while his eyes were off the road.

In theory, this sounds convincing, but actually it is probably a rare occasion when a driver takes his eyes completely off the road. It is entirely possible for a driver to glance at a billboard and still perceive the general

roadway situation with his side vision. On the other hand, the driver who takes his eyes completely off the road to look at a sign is just as likely to do the same thing when looking at a scenic view. In fact, the question might be posed: Is it any more dangerous to look at a billboard than it is to take in a scenic view?

A counterpart to this argument, based on the distracting qualities of outdoor advertising, is the alleviation of hypnosis theory. The outdoor advertising concerns point out that one of the causes of accidents is the failure of drivers to remain awake. The claim is made that drivers who spend a considerable part of their time traveling along dreary rural roadsides are lulled into a state of hypnosis because there is nothing to distract them sufficiently to keep them awake. They feel that the use of outdoor advertising signs along the roadway may alleviate the monotony, help to prevent drivers from getting sleepy and thus reduce the number of accidents.

Fortunately, a few studies have been made which examined the question in sufficient detail to justify a decision based on something other than opinion. The fact that outdoor advertising companies contribute generously of their time and board space for safety campaigns, slogans, et cetera, is only an incidental consideration in the matter of traffic safety. The real question is: Do outdoor advertising signs create traffic hazards?

Several studies have been made of selected portions of highways in Maryland, New York, Connecticut, Illinois and New Jersey.<sup>7</sup> However, none of them differentiate between accidents caused by vehicles entering and leaving the highway and those caused by roadside distractions. Therefore, no valid conclusions may be drawn. Three studies in Minnesota, Michigan and Iowa examined the problem more thoroughly and do help to answer a few questions.

Minnesota study.--The Minnesota study computed accident rates for tangent, curve and intersection sections of a highway and related them to different traffic volumes and roadside features, one of which was outdoor advertising signs. Several results were reported.<sup>8</sup> The accident rates for long tangents were not significantly different from those for short tangents, disproving the theory that short tangents interrupted by curves and intersections should tend to keep vehicle operators alert. If this result can be applied to the alleviation of hypnosis theory, it would tend to disprove it also.

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<sup>7</sup>Robert R. Bowie, Roadside Control, Baltimore: Maryland Legislative Council, Research Division, 1940, Report No. 5, pp. 15, 16.

<sup>8</sup>Paul R. Staffeld, "Accidents Related to Access Points and Advertising Signs in Study," Traffic Quarterly, Vol. 7, January, 1953, pp. 59-74.



Another result was obtained by comparing accident rates for curved and tangent sections of roadway having similar traffic volumes and speed limits. Substantially higher rates were found in all but three groups of curved sections which indicates that curves are more dangerous to the highway traveler.

When relating highway accident rates specifically to outdoor advertising signs, the conclusions were reached that there was a positive relationship between advertising sign frequencies and accident rates and that intersections with four or more signs had an accident rate approximately three times that of intersections with no signs.

The results from this study are shaded somewhat by the author's own admission that there were several deficiencies. He pointed out that the basic cause of each accident was not available, which would rule out many accidents having nothing to do with roadside features. In addition, the accidents were assigned to the roadway elements (tangent, curve and intersection) and not roadside features such as access points, businesses or signs. Finally, there was a great number of additional factors which may have either independently or through interaction created conditions of hazard which were not sufficiently taken into consideration.

Michigan study.--The Michigan study investigated accident rates along intersection and non-intersection sections of a main highway. It was found that intersection sections ac-

counted for less than one-third of the study road, yet they produced 70 per cent of the total accidents.<sup>9</sup> However, the above result does not relate to outdoor advertising signs. When the signs were correlated with other roadside features, the results proved that all the various factors were highly inter-related. Through partial correlation, it was found that outdoor advertising signs made no significant contribution to highway accidents at either the intersection or non-intersection sections of the study road. It was concluded that outdoor advertising signs had little or no effect upon the number of accidents along the highway.

Iowa study.--An experiment was conducted at the Iowa State College Driving Research Laboratory to investigate the relationship between placement of signs and possible driver distraction.<sup>10</sup> A typical landscape scene was created on the laboratory apparatus and subjects were tested to determine what difference existed between efficient observation of the landscape when covered with signs and when without signs. The result showed that numerous signs in the driver's field of vision did not influence efficiency at the wheel adversely.

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<sup>9</sup>Carl J. McMonagle, "The Effect of Roadside Features on Traffic Accidents," Traffic Quarterly, Vol. 6, April, 1952, p. 237.

<sup>10</sup>A. R. Lauer and Carl J. McMonagle, "Do Road Signs Affect Accidents?" Traffic Quarterly, Vol. 9, July, 1955, pp. 322-324.

Although no deficiencies in the study were pointed out, this experiment is not conclusive. In evaluating the results, it should be remembered that this was a laboratory test and the students were not experiencing a normal roadside situation while actually driving. There is no way to tell whether the signs would have caused accidents had the situation been a real one where there were other automobiles on the road and the driver was not concentrating on not being distracted.

Insurance claims.--The Outdoor Advertising Association of America undertook a study of the relation of highway accidents to insurance claims. A questionnaire was sent to the leading insurance companies in the United States requesting information from insurance records on claims that had been filed in connection with highway accidents in which outdoor advertising was stated to have been the cause of the accident. Not a single case was found in which outdoor advertising was reported as the cause of an accident.<sup>11</sup>

Conclusion.--There is a question which should be answered if possible: Is outdoor advertising a traffic hazard, as such, or only at certain locations? From the available data the question cannot be answered conclusively. However, the preponderance of fact indicates that outdoor advertising, as such, is not a traffic hazard.

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<sup>11</sup>Myles Standish, Statement of the Outdoor Advertising Association of America, Inc., Chicago: Outdoor Advertising Association of America, Inc., n.d., p. 5.

The answer for specific locations is not so easy to find. The Minnesota study indicated that accident rates were higher on curves and at intersections where there were four or more signs. The Michigan study indicated that outdoor advertising apparently did not affect accident rates at intersections or anywhere else. In both studies, the information available does not indicate how close to the intersections investigated outdoor advertising signs were located. It may well be that most of these intersections had no signs within two or three hundred feet, which would help to explain the lack of correlation between intersections and accident rates in the Michigan study.

Even the insurance claims records are not conclusive. It is highly improbable that these records would reflect any relationship between outdoor advertising and accidents when the signs may only be a contributory cause. For example, where a driver ignores a "slow" or "stop" sign and then has a collision at an intersection, the insurance record would not be likely to show that an outdoor advertising sign partially obstructed his vision, the driver did not see the other vehicle, and therefore thought it was safe to ignore the stop sign.

The evidence is not sufficient to rule out the possible relationship between outdoor advertising and accident rates at intersections and curves. Taking an objective viewpoint, it seems logical to require reasonable set back re-

strictions at intersections and on the insides of curves for adequate vision clearance. These are areas where the accident rates are higher and regardless of the absence of positive proof, reasonable restrictions which increase the possibilities for safe driving are logical and necessary.

It also seems logical that advertising signs, intermingled with roadway directional signs and traffic signals, would be detrimental to the smooth flow of traffic and in some instances dangerous where a driver failed to see or had to slow down suddenly to locate a sign or signal. There does not seem to be any question about the right to regulate signs with green, red, or amber lights; signs with animated, flashing or intermittent lighting effects; and signs which in any way resemble traffic directional signs and signals.

#### Protection Against Falling Signs and Electrical Defects

The reasoning behind regulations requiring outdoor advertising signs to meet prescribed structural and electrical standards is obvious and there is no need to belabor the point. It is sufficient to say that the interest of the general public is served when all structures are erected in such manner that there is no possibility of physical danger to anyone under ordinary circumstances.

#### Protection of Property Rights

The outdoor advertising industry has frequently argued that the erection of signboards, as a separate use of

property (distinguished from accessory-use signs), is a property right protected by law and cannot be nullified by the government. On the other hand, public bodies have argued that signboards are not so much a use of private property as they are a use of the public way. They point out that the sole reason for the existence of signboards is that they may be viewed by the passing motorists or pedestrians who are traveling on the public way. The latter argument was accepted by a court as far back as 1915, when, in the case of Churchill v. Rafferty, 32 Philippine Reports 580, the court ruled:

The success of billboard advertising depends not so much on the use of private property as it does on the use of channels of travel used by the general public.

Captive audience.--The idea that outdoor advertising is a use of the public way was further developed by the captive audience argument. In essence, what this means is that by placing outdoor advertising signs along the roadway, the advertising concerns have inflicted their structures upon an audience (the traveling public) which has no choice but to look at the signs.

This idea was firmly established when it was accepted by the Supreme Court of the United States in the case of Packer Corporation v. State of Utah, 285 U. S. 105, 52 S. Ct. 273 (1932). Part of the decision is quoted below:

Advertisements of this sort are constantly before the eyes of observers on the streets . . . to be seen without the exercise of choice or volition on their part. Other forms of advertising are ordinarily seen as a matter of choice on the part of the observer.

. . . In the case of newspapers and magazines, there must be some seeking by the one who is to see and read the advertisement. The radio can be turned off, but not so the billboard. . . . These distinctions clearly place this kind of advertisement in a position to be classified so that regulations or prohibitions may be imposed upon all within the class. . . .

Appurtenant easement.--In a recent court decision, Kelbro v. Myrick, 113 Vt. 64, 30 A. (2d) 527 (1943), principles of real property law, rather than the police power, were used to uphold a regulation of signboards. The statute involved prohibited billboards within 240 feet of the center line of the highway and within 300 feet of any intersection. This approach was suggested by Ruth I. Wilson in her article entitled "Billboards and the Right to be Seen from the Highway."<sup>12</sup> In real estate law, according to this theory, the abutting property is considered to be the dominant or ruling tenement and the highway is considered to be the servient or subordinate tenement. A right-of-way which is appurtenant to the dominant tenement can be used only for the purpose of passing to or from that tenement. It cannot be used for any purpose unconnected with the enjoyment of the dominant tenement, nor can it be assigned by the dominant owner to another person for another purpose.

This principle is frequently applied to rights-of-way and apparently it may be applicable to other appurtenant ease-

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<sup>12</sup>Ruth I. Wilson, "Billboards and the Right to be Seen from the Highway," Georgetown Law Journal, Vol. 30, June, 1942, pp. 723-750.

ments. A principle underlying the use of all easements is that the owner of the easement cannot materially increase the burden of it upon the servient estate (in this case the highway). As a result in the present case, Kelbro v. Myrick, the right of view of the owner or occupant of the abutting property was limited to such right as was appurtenant to that property and included only the right to display such goods or advertising matter which pertained to the business conducted thereon. The owner's appurtenant easement did not include the right to display advertising matter foreign to the business conducted on the property and he could not convey to anyone else a right which he did not himself possess. Since this decision, no case with which the writer is familiar has been argued on the same basis.

#### Protection of Health and Morals

The usual accusation made against the billboards or poster panels is that filth and refuse may be deposited or may collect behind them and that they provide a harboring place for criminals and persons indulging in immoral practices. Undoubtedly, at some time or another, trash and filth have collected behind billboards and, likewise, they have been used as a screen for immoral acts. However, such occurrences must be few in number when considering the tremendous number of signs in use throughout the country. At any rate, there is a definite lack of substantiation of these charges in the court records.



Where such practices have been discovered, the situation may be remedied by requiring adequate lighting at night and by the maintenance of a clear space below the signs.

#### Protection of Light, Air and Open Space

Generally, outdoor advertising concerns seem to recognize a need for light, air and open space. A long precedent has been set for this type of regulation in a multitude of zoning ordinances and court cases. As long as the distance is reasonable, there does not seem to be any question about the right to restrict signboards within a specified number of feet of a building, or to restrict the distance between signboards. On these issues the main interest of the courts is to insure a reasonable type of regulation.

#### Protection Against Esthetic Nuisances

Probably more has been written and less decided on the subject of esthetics than all the others in the outdoor advertising controversy. The organized outdoor advertising industry claims that its display units are attractive, well serviced and maintained. They feel that these units do not detract from their surroundings and sometimes add a spot of brightness or color to an otherwise drab scene. They recognize the public interest in scenic areas, parks and historical monuments and agree that advertising posters should not be located in such areas.

At the same time, the outdoor advertising companies are opposed to esthetic regulations that would greatly restrict or eliminate outdoor advertising structures. They feel that those with such extreme esthetic sensibilities are small outspoken minorities who do not represent a majority of the people. They have expressed the opinion repeatedly that outdoor advertising should be allowed wherever business is permitted. They claim that to prohibit their structures where other businesses are permitted would be an unfair restriction of private enterprise.

The trend of outdoor advertising regulation, however, is towards increased recognition of esthetic considerations. Although the majority of outdoor advertising companies may honestly try to locate their structures in acceptable places, there are always a few operators (usually with the "fly-by-night" type of business) who will not recognize the inappropriateness of certain areas for advertising signs. Because there is no way to separately curb the activities of this small number of operators, restrictions are needed for the entire industry.

The problem is an old one and is not easily solved. One can appreciate the concern of the advertising industry when it sees proposals that would all but eliminate its structures from the roadside. After all, advertising out-of-doors, to a moving market, is the very life of its business. The industry has no choice but to oppose regulations which

would put it out of business.

On the other hand, there is something to be said for a reasonable type of esthetic regulation. People take pride in their communities and they want them to develop in an orderly manner. Indeed, it is instinctive for people to desire pleasant surroundings in which to live. Where outdoor advertising operators are free to erect their signs without the guidance of esthetic regulations, the result may well lead to an unattractive community; but the implications go further.

A poorly developed and unattractive community will naturally lower the morale of its citizens. Under these conditions, there is frequently a tendency for people to neglect the upkeep of their properties. The effect "snowballs" and may result in a community's missing out on chances for new residential, business and industrial development because the appearance of the community exemplifies retrogression and poor community spirit.

It is realized that this argument is projecting to the extreme the potential ill-effects from uncontrolled outdoor advertising. Nevertheless, such results are entirely conceivable. Because of this possibility, there would seem to be sufficient reason for some kind of esthetic regulation. The objective of esthetic regulations should be to guide sound community development and appearance while still maintaining a place for the outdoor advertising industry.

Here again is an issue which ultimately must be decided by the courts. Many regulations, including esthetic provisions, can be proposed, but in the final analysis the Judiciary will have to make a decision either accepting or rejecting them. The possibilities for the acceptance of esthetic sign regulations will depend in large part upon the future court interpretation of the scope of the police power.

Up to the present time, it generally has been accepted that the police power will not be extended to protect the esthetic. However, the meaning of the police power is elastic and it depends more upon the needs of the people at the time it is being questioned. Where public opinion is strong enough, the courts will change their interpretation accordingly. It will be shown in Chapter Five that the court interpretations have changed decidedly during the past 50 years.

There is strong reason to suspect that some court decisions have upheld billboard and sign regulations as being detrimental to health, safety and morals when, in fact, the only consideration was the esthetic. If it can be determined that health, safety and morals were not, in fact, a consideration, then it would have to be admitted that the doctrine incorrectly described the factors that brought forth a decision in the particular case.

J. J. Dukeminier, Junior, has cited, as a typical example, the case of Murphy, Inc. v. Westport, 131 Conn. 292,

40 A. (2d) 177 (1945).<sup>13</sup> The plaintiff billboard company asked for an injunction restraining the enforcement of the provisions in Westport's zoning ordinance which prohibit: "Billboards or advertising signs . . . in all business districts except as they refer to business conducted on the property on which the billboard stands." The Superior Court granted an injunction on the grounds that this classification was unreasonable and illegally discriminatory; it found the regulations contained no provisions as to size, construction or site designed to insure the safety of the public. It also refuted the contention that the classification was reasonably related to public health or morals.

In reversing this decision, the Connecticut Supreme Court of Errors said:

In the earlier cases, courts apparently did not realize as clearly as they do now, as a result of facts found upon various trials, that billboards may be a source of danger to travelers upon highways through insecure construction, that accumulations of debris behind and around them may increase fire hazards and produce unsanitary conditions, that they may obstruct the view of operators of automobiles on the highway and may distract their attention from their driving, that behind them nuisances and immoral acts are often committed, and that they may serve as places of concealment for the criminal. . . .

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<sup>13</sup>J. J. Dukeminier, Jr., "Zoning for Esthetic Objectives: A Reappraisal," Law and Contemporary Problems, Land Planning in a Democracy, Vol. 20, Spring, 1955, p. 221.

As far as the record shows, the trial court did not have before it any adequate basis of facts upon which to determine that the invalidity of the provisions of the ordinance in question had been established. If we were to sustain its decision, we would in effect be holding that, as a matter of law, the legislative body cannot, with such exceptions as are provided in the ordinance before us, constitutionally prohibit billboards in the business zones of any of our towns, no matter what may be the circumstances or justifications which existed in the particular case.

It is apparent that such reasoning, unsupported by objective evidence, merits criticism. It does not give an accurate description of the problems which must be faced today. It certainly provides no sound basis on which to make future decisions.

Obviously the reasoning used by the Supreme Court of Connecticut in upholding the ordinance was not based upon the actual facts before the trial court. There was no evidence before the court in this particular case, that the billboards were a fire hazard, structurally unsafe, an infringement on light, air and open space, a harbor for immoral acts, or a hazard to the safety of drivers. Even were these facts generally true, there are adequate remedies which fall short of absolute prohibition.

The same difficulties would seem to be presented in the basing of restrictions on signs and billboards within a specified distance of parks and the centerlines of highways for health, safety, morals and general welfare reasons. If the advertising structures were set back a proper distance

from intersections and from the center lines of abutting highways, and if they meet adequate structural requirements, the only reason for prohibiting outdoor advertising signs within specified distances of parks and highways is an esthetic one. The writer believes that this will be increasingly recognized as a proper one.

#### Land Values

While the factors previously discussed represent the major goals of outdoor advertising regulation, land value is a secondary consideration which results primarily from them. The value of a piece of property results from its utility. If the utility is reduced because the view from the site is unpleasant, due to the location of billboards near-by, then the value of the land tends to decline.

The approaches to a city or town are a case in point. Signs and billboards erected adjacent to such highways are a familiar sight. Much of this land, with proper planning, would make excellent residential developments. However, when advertising signs are scattered indiscriminately along the way, the land loses much of its attractiveness and people will no longer invest money in it for residential purposes.

At the same time, there is a limit to the amount of land adjacent to the approaches of a city that is needed for business uses. If the land is not needed for business uses and people no longer desire to use it for residential pur-

poses, then the value of the land is likely to fall, resulting in a possible loss to the property owner.

### Conclusion

It is apparent that outdoor advertising has become a permanent part of this country's economy. As such, it is in need of a certain amount of regulation to insure its being used in a manner which will be acceptable to all phases of our society. The preceeding analysis indicates that such regulations should protect the public from traffic hazards; unsafe structures; loss of property rights; impairment of health and morals; loss of light, air and open space; and deteriorated community appearance.



## CHAPTER III

### METHODS OF STATE REGULATION

There are four general methods for the state regulation of outdoor advertising: (1) the outdoor advertising statute which is a single purpose enactment; (2) marginal land acquisition; (3) highway development rights; and (4) the inducement of voluntary action. Each method will be discussed in sufficient detail to explain what it involves and what may reasonably be accomplished through its use.

#### The Outdoor Advertising Statute

State outdoor advertising laws range from simple enactments restricting advertising from the highway right-of-way to comprehensive statutes including provisions for location, size, spacing, structural requirements, setbacks, licenses and permits. Alabama, as an example of the first type, provides a system of licensing and permits and a few general provisions to facilitate the administration of the act. Arkansas has a statute with provisions for the protection of the highway right-of-way and the adjacent private property but it contains little else. On the other hand, California, Massachusetts and New Jersey have statutes that provide in detail for the comprehensive regulation of outdoor advertising. A discussion of the major types of pro-

visions in the statutes may lead to a better understanding of these acts and the measures required for the proper regulation of outdoor advertising.

#### Administration

State outdoor advertising laws customarily provide statutory provisions and supplemental administrative rules, to be enforced by either an administrative officer or an administrative body. In Virginia this duty is entrusted to the Commissioner of the Department of Highways. In California the Director of the Department of Public Works is the responsible official. Massachusetts has an Outdoor Advertising Authority in place of a single administrative agency.

The enforcement of a state regulation requires a large staff. Usually, the director or the administrative body is authorized to hire a supervisor and such assistants as are needed to properly enforce the law. In California, the enforcement authority is placed in an existing agency -- the Division of Highways of the Public Works Department. The Director is authorized to appoint an agent in each county to issue licenses and permits and collect fees.<sup>1</sup>

In the usual statute, the Director, in addition to his power to hire a supervisor and the necessary clerical

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<sup>1</sup>California Business and Professions Code, Annotated, with Cumulative Supplement through 1955, Division 3, Chapter 2, Article 2.

assistants, is authorized to issue administrative rules and regulations for carrying out the intent of the state law. The New Jersey Statute is a typical example in which the Director is authorized to make rules and regulations, to prescribe and enforce penalties, to revoke licenses and permits for cause, and to remove any outdoor advertising structures that do not meet the provisions of the act.<sup>2</sup>

#### License and Permit Requirements

Customarily, license and permit regulations apply only to separate-use signs. The purposes of license and permit regulations are threefold. First, they furnish the state with a means of enforcing existing regulations relating to the number, size, type and location of all signs and billboards under their jurisdiction by granting or refusing permits. Secondly, they provide a means of financing inspection services to insure proper construction and maintenance of all such facilities. Thirdly, they are sometimes used as a revenue-producing measure.

State acts requiring licenses and permits usually apply only to unincorporated territory. Depending upon the statute, the state may be the only governmental body permitted to grant licenses and permits, or the privilege may also be extended to the county.

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<sup>2</sup>New Jersey Laws, Chapter 168, P. L. 1942, as amended by Chapter 169, P. L. 1947; Chapter 403, P. L. 1948; Chapters 51 and 76, P. L. 1953, Sections 20-39.

The license.--The license grants permission to engage in the business of outdoor advertising, generally for a one-year period, and is renewable on the same basis. It is usually a prerequisite for obtaining a permit to erect a sign or billboard. The application for the license is usually made on a standard type of form. The applicant may be required to list each county in which he intends to operate and other pertinent information.

License fee.--The license fee customarily varies with the administrative unit. It may be a flat rate varying anywhere from \$25 to \$100 per year. California requires a fee of \$50 for the original license and for each renewal thereof.<sup>3</sup> New Jersey requires that each application for a license be accompanied with a fee of \$100.<sup>4</sup>

Other states provide a different basis for their license fees. Alabama, for example, varies the fee with the population of the county.<sup>5</sup> If the county population is over 200,000, the fee is \$150; if it is between 100,000 and 200,000, the fee is \$125; if it is between 75,000 and 99,999, the fee is \$100; if it is between 50,000 and 74,999, the fee is \$75; if it is between 30,000 and 49,999, the fee is \$25; and if it is less than 30,000, the fee is \$15.

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<sup>3</sup>California, op. cit., Article 8, Section 5324.

<sup>4</sup>New Jersey, op. cit., Section 20.

<sup>5</sup>Alabama Session Laws, 1935, Page 256, Article 13, Section 348, Schedule 23.

In Florida, the license fee varies with the number of counties in which the advertising company operates.<sup>6</sup> For operation in one county, the fee is \$25 per year; for operation in from two to eight counties, the fee is \$75 per year; and for those companies operating in more than eight counties, the fee is \$200 per year. Massachusetts has still another type of provision where the license fee varies with the number of permits in use.<sup>7</sup> The fee is \$25 for up to 10 permits, \$50 for up to 100 permits, \$125 for up to 200 permits, \$175 for up to 300 permits, \$225 for up to 400 permits, \$250 for up to 500 permits and \$300 for any number of permits over 500.

Sometimes a smaller license fee is required where a firm or corporation erects and maintains outdoor advertising signs upon property not its own, but not for direct profit as do companies engaged in the outdoor advertising business. Maine has such a provision which requires a \$25 annual license fee.<sup>8</sup>

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<sup>6</sup>Florida Statutes, 1955, Title 30, Chapter 479, Section 479.04.

<sup>7</sup>Massachusetts Outdoor Advertising Authority, Rules and Regulations for the Control and Restriction of Billboards, Signs and other Advertising Devices, Boston: Outdoor Advertising Authority, January 26, 1951, Section 1-B.

<sup>8</sup>Maine Revised Statutes, 1954, Chapter 23, Section 137.

License fee for accessory-use signs.--Customarily, firms erecting accessory-use outdoor advertising signs are exempted from the licensing provisions. However, in North Carolina a provision has been included in the outdoor advertising statute which requires a license fee of one dollar for each accessory-use sign up to 1,000 in number and for 1,000 signs or more, a fee of \$1,000.<sup>9</sup>

Provisions for sharing license fees with counties.--Whether the statute contains income-sharing provisions depends upon the state. A majority of the laws reviewed did not make such a provision. The North Carolina Statute specifically stated that counties were not permitted to levy a license tax for outdoor advertising structures.<sup>10</sup> However, the Alabama Statute requires that both a state and county license fee be collected, the county fee being 50 per cent of the state fee.<sup>11</sup> California requires that 20 per cent of all license fees collected by the county clerks be retained for use of the county.<sup>12</sup> Florida requires that \$15 be collected annually for the use of the county in each county in which the outdoor advertising company operates.<sup>13</sup>

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<sup>9</sup>North Carolina General Statutes, Recompiled in 1950, Section 105-86(a).

<sup>10</sup>Ibid., Section 105-86(j).

<sup>11</sup>Alabama, op. cit., Article 14, Section 350.

<sup>12</sup>California, op. cit., Article 8, Section 5321.


<sup>13</sup>Florida, op. cit., Section 479.04.

The permit.--A permit is customarily required for the erection of an outdoor advertising structure and is renewable on an annual basis. Temporary permits may also be issued, usually for periods less than six months. When applying for a permit, the applicant usually is required to furnish construction plans, a diagram and complete information concerning the location, size, illumination and any other facts which the administrative authority deems pertinent. Frequently the permitted signs are required to display prominently on the front of the structure such information as the number of the permit and the name and address of the owner of the sign. In some states a small tag, displaying the number of the permit, is issued with the permit and is required to be posted on the front of the structure. Nearly every state requires that the permit application be accompanied with a document (or a statement to the same effect) indicating that the sign owner or his agent has permission to erect the advertising structure on the property under consideration.

Massachusetts has an unusual provision relating to the acceptance of a permit application.<sup>14</sup> Upon receipt of the application, the "Authority" is required to send a copy to the city or town where the structure is to be located. If the city or town objects to the location, it is required to file its objections in writing with the Authority, within 30 days

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<sup>14</sup>Massachusetts, op. cit., Section 2-D.



from the date of the notice. The Authority in turn notifies the applicant who is given 10 days from the date of notice to file reasons why a permit should be granted. A hearing will be given by the Authority before final action is taken, if requested.

Permit fees.--The provisions for the payment of permit fees vary considerably among the states. In most cases the fee varies with the area of the sign. Florida, for example, provides a levy of two cents per square foot of area with a minimum fee of 50 cents.<sup>15</sup> Massachusetts requires both an examination and inspection fee.<sup>16</sup> Each application for a permit must be accompanied by an examination fee of one dollar for a sign containing 40 square feet or less of area, two dollars for one containing between 41 and 200 square feet of area and three dollars for any sign with over 200 square feet of area. Upon issuance of the permit, an inspection fee is required to be paid within 10 days from the date of approval. The rate is 25 cents for a sign containing 40 square feet or less of area, one dollar for signs containing between 41 and 200 square feet of area and three dollars for any sign over 200 square feet in area. Renewal fees are customarily the same as the original permit fee.

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<sup>15</sup>Florida, op. cit., Section 479.07(2).

<sup>16</sup>Massachusetts, op. cit., Section 2-F.



Temporary permit fees.--Temporary permits are usually issued to people not in the business of outdoor advertising. Massachusetts has a typical provision in its Regulations which permits the erection of temporary advertising devices for a maximum period of 150 days.<sup>17</sup> A fee of one dollar is levied with an additional fee of two cents for each period of 30 days for every seven square feet of sign area or fraction thereof.

Signs exempted from permit regulations.--In the typical statute, accessory-use signs are exempted from the permit regulations. Of the state regulations reviewed, only Massachusetts required persons not engaged in the business of outdoor advertising to observe the full permit provisions. The New Mexico Statute excepted all accessory-use signs from the permit requirements.<sup>18</sup> New Jersey excepts accessory-use signs from its permit regulations, provided that all business signs are maintained not more than 200 feet from the point on the premises where the business is conducted.<sup>19</sup> The State of Maine has a similar provision which excepts accessory-use signs from permit regulations when the number of signs does not exceed 10 in number and a total area of 250 square feet,

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<sup>17</sup>Massachusetts, op. cit., Section 3-D (2).

<sup>18</sup>New Mexico Statutes, 1953, Annotated, Chapter 55, Article 7, Section 8.

<sup>19</sup>New Jersey, op. cit., Section 35.

and the signs are located within 300 feet of the primary location of the business.<sup>20</sup>

#### Posting Bond By Out of State Advertisers

A few states, including Connecticut, Florida, Maryland, Virginia, and North Carolina have provisions for the posting of bonds. The typical provision stipulates that no license may be issued to any person having his principal place of business outside the state, or which is incorporated outside the state or to any person not residing in the state, until such person has filed a surety bond for an approved amount. The size of the bonds varies with the state. Virginia requires a bond of \$1,000,<sup>21</sup> North Carolina requires one of \$5,000,<sup>22</sup> whereas Connecticut permits the Commissioner of State Police to set the amount.<sup>23</sup>

#### Structural Requirements

Most states do not include structural requirements in their outdoor advertising regulations. Evidently the counties and municipalities are expected to take care of this provision. At least two states (California and Oregon) require all outdoor advertising structures to be built to withstand a minimum wind load of 20 pounds per square foot. A

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<sup>20</sup>Maine, op. cit., Section 138.

<sup>21</sup>Virginia Code, 1950, with Cumulative Supplement, 1954, Title 33, Section 33-306.

<sup>22</sup>North Carolina, op. cit., Section 105-86(f).

<sup>23</sup>Connecticut General Statutes, revised 1949, Chapter 237, Section 4697.

provision generally found is one requiring the sign owners to maintain their structures in good condition.

### General Provisions

There is a multitude of general provisions in the state regulations for outdoor advertising which include almost every detail imaginable. It would be impossible in a work of this nature to discuss all these provisions and there will be no attempt to do so. Instead, selected provisions from a number of state acts will be described to illustrate the major points customarily included in such regulations.

Certain outdoor advertising prohibited.--It is customary at the beginning of a state act to list certain areas from which outdoor advertising is generally excluded. These areas usually relate to the highway right-of-way and the land adjacent to it. New Mexico has a provision in its law which provides the following in part:<sup>24</sup>

No person shall place, erect or maintain any advertising sign, signboard or device of any character upon or over the right of way of or upon any land adjacent to any public highway, outside of an incorporated city, town or village under any of the following conditions:

In or near any stream or arroyo where such sign might be deluged by freshet and swept on to the roadway or spillway of such public highway or under a highway structure crossing the stream or arroyo or against the supports of any highway structure.

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<sup>24</sup>New Mexico, op. cit., Section 10 (c) through (f).

If placed upon a hill above a highway in such manner that there is reasonable danger that such sign, signboard or device might fall or be blown or propelled by the forces of erosion upon such highway.

If such sign carries a directional warning or light or reflector information legend of a type which is carried by standard highway marker system signs.

If such sign is in the general shape of a railroad crossing sign or in imitation of any warning or danger sign.

North Carolina has another provision which falls into the same category.<sup>25</sup> It makes it unlawful for any person, firm or corporation to maintain a billboard (outside of the city, or town limits) which is larger than six square feet, at or nearer than 200 feet to any walk or drive from any school, church, or public institution. Billboards attached to the side of a building which is erected within 200 feet of such walk or drive, or billboards located on the opposite side of the highway from such entrance, or billboards obstructed from view from such walk or drive by another building are excepted from this provision.

The California Statute is more comprehensive than many of the state acts; and, in addition to most of the provisions previously mentioned, it includes the following:<sup>26</sup>

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<sup>25</sup>North Carolina, General Statutes, Recompiled 1952, Section 136-102.

<sup>26</sup>California, op. cit., Article 6, Sections 5285, 5286.

No advertising structure may be maintained unless the name of the person owning or maintaining it, is plainly displayed thereon.

No advertising display shall be placed in any of the following locations or positions or under any of the following conditions or if the advertising structure or sign is of the following nature: . . . (d) if not maintained in safe condition; (e) if visible from any highway and displaying any red or blinking or intermittent light likely to be mistaken for a warning or danger signal; (f) if any illumination thereon shall be of such brilliance and so positioned as to blind or dazzle the vision of travelers on adjacent highways.

One other provision is usually included in the section on prohibited outdoor advertising. The Colorado Statute has typical wording:<sup>27</sup> "No sign and no printing, pictures . . . or other advertising matter whatsoever shall be posted, tacked, painted, printed or otherwise affixed to any fence post, telephone post, tree, bridge, barricade, rock or fence."

Setbacks from Highways.--Provisions for the setback of outdoor advertising structures from the highway are included in most state regulations. However, the distance required varies considerably among the states. The Florida law prohibits outdoor advertising structures within fifteen feet of the outside boundary of any federal or state highway.<sup>28</sup>

Massachusetts combined size and setback regulations in requiring signs and other outdoor advertising devices to be set back at least 50 feet from the boundary line of any pub-

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<sup>27</sup>Colorado Session Laws, 1937, Chapter 203, Section 6.

<sup>28</sup>Florida, op. cit., Section 479.11, (1,.

lic way, if 32 square feet or less in area.<sup>29</sup> If the signs are more than 32 square feet in area and up to 25 feet in length and 12 feet in height, they must be set back 100 feet. If the signs are more than 25 feet in length and 12 feet in height and up to a maximum size of 50 feet in length and 12 feet in height, they must be at least 300 feet from the boundary line of any public way. However, the "Authority" may permit signs or other advertising devices which do not exceed 40 feet in length and 15 feet in height, provided they are set back 300 feet from the boundary line.

A Vermont law differentiated between accessory-use and separate-use sign setback provisions. A setback of 10 feet from the nearer edge of the pavement is required for accessory-use signs, unless they are erected on a building. Separate-use outdoor advertising structures over 300 square feet in area must be located at least 300 feet from the center of the traveled part of the highway; and any separate-use signs under 300 square feet, other than temporary signs, must be set back as many linear feet from the center of the traveled way as there are square feet in the face of the signs.<sup>31</sup> In no case are such signs permitted closer than 35 feet from the center of the traveled way.

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<sup>29</sup>Massachusetts, op. cit., Section 4-A (1), (2), (3).

<sup>30</sup>Vermont Statutes, Revised 1947, Chapter 311, Section 7681.

<sup>31</sup>Ibid., Section 7689.

Turnpikes and throughways.--The provisions for prohibiting outdoor advertising along turnpikes and throughways are similar in the states where used. The Maine Statute has a typical provision.<sup>32</sup> Signs and other advertising structures are prohibited within 500 feet of the nearest right-of-way boundary line of any State turnpike. This law excludes accessory-use signs provided that such structures do not exceed 10 in number or a total area of 250 square feet and provided that such structures are within 300 feet of the principal building on the premises. The New York State Thruway Authority, pursuant to The Public Authorities Law,<sup>33</sup> adopted a 500 foot setback for all advertising devices located adjacent to any portion of the Thruway System.

An important variation of the turnpike and throughway provisions has been developed in California. The Statute defines a "landscaped freeway" as follows:<sup>34</sup>

. . . shall be deemed to mean a section or sections of a freeway which is now, or hereafter may be, improved by the planting of at least on one side of the freeway right of way of lawns, trees, shrubs, flowers or other ornamental vegetation which shall require reasonable maintenance.

Then, in a later section of the same statute, a provision has been included which prohibits outdoor advertising on property adjacent to a section of the freeway which has been or may be

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<sup>32</sup>Maine, op. cit., Section 149.

<sup>33</sup>New York Session Laws, 1952, Chapter 593, Section 361-a.

<sup>34</sup>California, op. cit., Article 1, Section 5211.

(in the future) landscaped, if the advertising display is designed to be viewed primarily by persons traveling on the freeway.<sup>35</sup>

Parks and parkways.--Provisions for the prohibition of outdoor advertising structures within a specified number of feet of a park or parkway are not unusual. Massachusetts prohibits outdoor advertising within 300 feet of a public park or reservation, if within view of any portion of the same.<sup>36</sup> The Vermont Statute has almost an identical provision.<sup>37</sup>

In Virginia, outdoor advertising is prohibited within 500 feet of certain parkways or within 500 feet of any public cemetery, park reservation, playground, national or state forest when outside the limits of a municipality.<sup>38</sup>

Curves and highway and railroad intersections.--In nearly every state regulation, there is a provision prohibiting outdoor advertising within specified distances of highway curves and highway and railroad intersections. The distance from intersections most frequently required is 300 feet although some states do require more. New Mexico prohibits outdoor adver-

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<sup>35</sup>California, op. cit., Article 6, Section 5291.

<sup>36</sup>Massachusetts, op. cit., Section 4-C.

<sup>37</sup>Vermont, op. cit., Section 7689.

<sup>38</sup>Virginia, op. cit., Section 33-317.



tising within 300 feet of an intersection of a highway with another highway where the line of sight between vehicles on the intersecting highways is obstructed.<sup>39</sup> It further prohibits signs in locations where they may obstruct the line of sight of a train at any point within 1,200 feet of an intersection of a highway with a railroad, or the line of sight of a vehicle within 500 feet of such intersection. Another provision of the same statute prohibits signs on the inside of a curve of a highway at any location which obstructs the line of sight from one vehicle on the highway to another vehicle on the same highway when within a distance of 1,200 feet.<sup>40</sup>

California requires a 300 foot setback from both highway and railroad intersections.<sup>41</sup> However, this particular provision permits signs to be erected on any permanent buildings located at lesser distances from an intersection and which already obstruct the line of sight, provided that the addition of a sign does not increase the obstruction.

Spacing of structures.--Only a few of the state regulations reviewed included provisions for the spacing of or distance between outdoor advertising structures. The Oregon Statute has the most detailed provisions noted.<sup>42</sup> It prohibits signs

<sup>39</sup>New Mexico, op. cit., Section 10 (a), (b).

<sup>40</sup>Ibid., Section 58-710 (g).

<sup>41</sup>California, op. cit., Article 6, Section 5287 (a).

<sup>42</sup>Oregon Laws, 1955, Chapter 541, Sections 3(7); 4(1); (2); 5(1); 14(3), (4).

within view of the highway or throughway within one-half mile, upon the same side of the highway or throughway, of any other advertising sign which advertises the goods or services of the same commercial enterprise. Excluded from this provision are signs erected within a defined business district. No advertising structure is permitted within view of any highway within 300 feet of any other advertising structure on the same side of the highway when their combined areas is less than 130 square feet, or within 500 feet of any other advertising structure on the same side of the highway when their combined area exceeds 130 square feet. This provision excepts signs erected in a defined business district and signs advertising exclusively a roadside service located within five miles of the highway or throughway upon which the sign is placed, providing (1) the sign is less than 250 square feet, (2) it is located not more than two miles from the roadside service or its access road, and (3) there are not more than two such signs in each direction from the roadside service on each highway upon which, or within five miles of which, the roadside service is located. Finally, no advertising structure is permitted within view of any throughway within 1000 feet of any other advertising sign or structure upon the same side of the throughway.

A recent New Mexico Statute prohibits the erection of any sign adjacent to the highway where such sign, in combination with one or more other signs in a series, is in such

proximity to the others and is of such continuity of context, catch lines, trade marks, phrases, art or shape as to naturally direct the attention of the traveling public from one sign to another.<sup>43</sup>

Massachusetts has a more general provision which has been used in similar form in Delaware, Vermont, and New Jersey. It prohibits the erection of an outdoor advertising structure which will, in the opinion of the "Authority," obstruct the visibility of an existing sign previously issued a permit.<sup>44</sup>

Size restrictions.--Only a few of the state regulations reviewed contained provisions limiting the size of outdoor advertising structures. In Massachusetts a general provision permits the "Authority" to prescribe the dimensions and materials for all advertising structures.<sup>45</sup> The New Jersey Statute has a provision which is more explicit. It prohibits any outdoor advertising structure more than 25 feet in height and 60 feet in length or which exceeds 1000 square feet in area, except where such structure is not readable from a State highway.<sup>46</sup> In Vermont, the outdoor advertising statute provides only an area limitation which is 600 square feet.<sup>47</sup>

<sup>43</sup>New Mexico State Highway Commission, Resolution, September 24, 1953.

<sup>44</sup>Massachusetts, op. cit., Section 6-C.

<sup>45</sup>Ibid., Section 5-A.

<sup>46</sup>New Jersey, op. cit., Section 30.

<sup>47</sup>Vermont, op. cit., Section 7684.

The States of Oregon and Connecticut provide substantially the same provisions in their statutes.

Business districts.--The majority of state regulations do not make any special provisions for business districts.

Evidently such provisions are usually left to the roadside and local zoning ordinances when used. However, at least two states have included provisions for the business district in their outdoor advertising statutes. The Oregon Statute defines a business district as follows:<sup>48</sup> "Business district means the territory contiguous to a highway or throughway when 50 per cent or more of the frontage thereon for a distance of 600 feet or more on one side, or 300 feet or more on both sides of the highway or throughway, is occupied by buildings used for business." Further on in the statute, provisions restricting the spacing of signs are specifically excepted in business districts, thereby inferring that outdoor advertising is a permitted use in all such areas.

The Massachusetts Statute permits the erection of advertising structures in areas which the "Authority" may determine to be of a business character.<sup>49</sup> It further defines a business area as: ". . . any section which is commercial, industrial, marketing, mercantile or on unrestricted commercial arteries and adjacent to commercial enterprises."

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<sup>48</sup>Oregon, op. cit., Section 2(3).

<sup>49</sup>Massachusetts, op. cit., Section 4-A.

Scenic views.--The restriction of outdoor advertising in scenic areas has seldom been included in state regulations to date. The Massachusetts Statute prohibits outdoor advertising in areas where, in the opinion of the "Authority," it would be particularly harmful to the unusual scenic beauty of the territory.<sup>50</sup> In New Jersey, a "natural area" is defined as any area along one side of a rural highway, where the distance between two commercial points is one measured mile or more. The regulations adopted by the Outdoor Advertising Tax Bureau prohibit outdoor advertising: "along a rural highway, in a defined 'natural area,' except within a distance of 500 feet from the line or end of a commercial building. . . ."<sup>51</sup>

Non-conforming provisions.--The attitude of the states varies considerably with regard to non-conforming provisions in outdoor advertising laws. The statutes of two states present the extremes in these regulations. Maryland provides that nothing in its outdoor advertising statute shall affect any existing structure or display providing it is not hazardous to the operation of a motor vehicle upon a state highway.<sup>52</sup> On the other hand, Delaware required the conformance or re-

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<sup>50</sup>Massachusetts, op. cit., Section 6-A.

<sup>51</sup>Outdoor Advertising Tax Bureau, Rules and Regulations, Trenton, New Jersey: Department of the Treasury, Division of Taxation, April, 1954, Article 4, Section 1 (e).

<sup>52</sup>Maryland Code, Annotated, Article 56, Section 214.

moval of all non-conforming signs within a three-year period.<sup>53</sup>

Exceptions.---Certain signs or types of signs are generally excepted from the provisions of the outdoor advertising regulations. The exceptions may be stated in some cases for individual provisions (as in the Oregon spacing provisions) or they may all be grouped together, which is the usual procedure. California has a typical list, although some other states include more exceptions:<sup>54</sup>

The provisions of . . . shall not apply to any advertising structure or sign if the advertising display is used exclusively: (a) To advertise the sale or lease of the property upon which such advertising display is placed. (b) To designate the name of the owner or occupant of the premises upon which such advertising display is placed, or to identify such premises. (c) To advertise goods manufactured or produced, or services rendered, on the property upon which such advertising display is placed.

### Conclusion

To be effective in regulating outdoor advertising, a statute would necessarily have to include most of the types of provisions that have been discussed. These, of course, would need adapting to the particular state in which they were to be used. However, the use of all of these types of provisions will not necessarily solve the problem. There are still unsolved questions in the provisions relating to scenic views, business districts, and spacing and size restrictions. The provisions for scenic views and business areas do not out-

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<sup>53</sup>Delaware Code, 1953, Title 17, Chapter 11, Section 1103 (a)(2).

<sup>54</sup>California, op. cit., Article 6, Section 5293.

line clearly where these areas are, nor do they provide sufficient standards for a board or commission to designate such areas in any reasonable manner. The size and spacing restrictions, except in Oregon, where they have not been in use long enough to give an adequate evaluation, seem to be overly restrictive. In some states the regulations virtually eliminate standard size billboards or poster panels from the highways.

The administration of an outdoor advertising regulation is as important as the regulation itself, for without administration, the statute is ineffective. It should be evident from the provisions discussed that efficient administration of this type of statute will require clerical and field personnel. Unless they are employed in sufficient numbers, it will be impossible to properly carry out the provisions.

The use of license and permit regulations for revenue purposes seems ill-suited. Excessive rates are not possible, in the first place, unless permitted by law. Even where high rates are permitted, they are discriminatory. Such rates would tend to eliminate the small outdoor advertising concern and would provide a virtual monopoly for those large companies which could still afford the license fees.

#### Marginal Land Acquisition

Marginal land acquisition is the taking of property adjacent to the highway in addition to the amount actually

needed for immediate highway use. The land may be acquired as a gift or purchase. If purchased, it may be obtained through agreement between the landowner and the governmental body or through condemnation as provided by eminent domain, which sometimes presents legal problems. By taking property in fee simple, the state, county, or municipality gains control of all the development rights. This makes it possible to prohibit undesirable development along the roadside. Where outdoor advertising falls into this category, it too would be prohibited.

#### Legal Status

Evidently the legal status of marginal land acquisition through the use of eminent domain has never been fully established. There is still question as to whether such a program can be carried on solely by legislative authorization or whether a constitutional amendment would be necessary. Either course of action has drawbacks. As a legislative authorization, a court interpretation of what is a public purpose is usually required. These interpretations generally have been narrow and quite restrictive. Some jurisdictions limit the concept of public use to actual use or enjoyment by the public, while the more liberal courts have broadened the interpretation to include whatever is of benefit to a substantial portion of the public.<sup>55</sup> On the other hand, constitutional

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<sup>55</sup>David R. Levin, Public Control of Highway Access and Roadside Development, Washington: Government Printing Office, 1947, p. 61.



amendments are difficult to enact into law. According to one publication, only eleven state constitutions now contain provisions authorizing the acquisition of marginal land.<sup>56</sup> The latter method still seems more desirable. Once enacted into law, the constitutional amendment provides a sound basis on which to plan a land acquisition program, whereas a legislative act will always be subject to interpretation.

An evaluation of marginal land acquisition is not conclusive because it has both assets and drawbacks. It is a technique which provides effective control of roadside development and insures maximum benefits from the highway system. When used, at the same time that a highway is being relocated or a new highway is being constructed, additional land can usually be purchased at its most reasonable price. This is particularly important where a highway is expected to need widening in the foreseeable future. A small outlay at an opportune moment could, conceivably, save millions of dollars in a few years time.

On the negative side of the ledger, it must be said that marginal land acquisition is expensive, even though it may be saving money in the final analysis. It requires an additional outlay of funds when funds may be difficult enough to get for the present improvement. The additional land purchased becomes public property, takes valuable land off the

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<sup>56</sup>American Automobile Association, Roadside Protection, A Study of the Problem and Suggested Approaches to Betterment, Washington: American Automobile Association, 1951, p. 84.

tax rolls, and requires an outlay of money for its upkeep. Perhaps even more important, it is difficult to persuade the people that such an expenditure is necessary.

#### Acquisition of Highway Development Rights

By the acquisition of highway development rights, the state or one of its subdivisions acquires from the abutting property owners the right to improve the land adjacent to the highway. It differs from marginal land acquisition in that only the right to develop the land is obtained. The title to the land remains with the owner and he is at liberty to sell, lease or mortgage the land or to develop it for any purposes which do not conflict with the public interest. In the usual sense of the term, a governmental body purchases the private owner's right to improve his land in a manner inconsistent with the present land-use policy. The right generally is obtained for a distance anywhere from 100 to 300 feet from the near edge of the right-of-way. This, of course, would prohibit outdoor advertising from the lands adjacent to the highway, unless authorized by the governing body.

In order to purchase highway development rights, state enabling legislation is needed. Again, it is necessary to demonstrate that the acquisition is needed for a public purpose. Maryland has a law which permits the acquisition of five different interests in the land.<sup>57</sup> The state may purchase an

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<sup>57</sup>Maryland Code, Annotated, Article 89 B, Section 8(b).

easement to restrict the right of the owner to: (1) erect buildings or other structures; (2) construct any private drive or road; (3) remove or destroy shrubbery or trees; (4) place thereon trash or unsightly or offensive material; and (5) display thereon signs, billboards or advertisements.

These interests or easements may be used individually or in combination to regulate land use adjacent to the highway.

Scenic Easements.--A special form of development right is the acquisition of scenic easement. It transfers from the owner to a public body the right to develop areas adjacent to the highway for esthetic and scenic purposes. The most effective use of this tool has been in the protection of views from parkways, historical sections of highways, and lands bordering streams, lakes and rivers. The Blue Ridge Parkway is a good example. The right-of-way averages from 800 to 1000 feet and is flanked in many places by scenic easements that prohibit commercial use of the abutting property, prohibit the cutting of timber, and generally protect the view.<sup>58</sup>

The acquisition of highway development rights is an economic and effective way to control outdoor advertising along the roadside. If the development rights are acquired at the time the highway is first constructed, the costs should be fairly low. It was reported in Ohio that development costs

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<sup>58</sup>American Automobile Association, op. cit., p. 51.

averaged \$109 per mile in 1946.<sup>59</sup> On the other hand, fictitious land values may be in use. If this is so, the cost of acquiring development rights may be nearly as great as full possession of the property. When such is the case, marginal land acquisition is a better procedure. One other drawback is the slow acceptance this type of measure gains from the public. The courts and legislatures generally reflect public opinion and when public acceptance is lacking, these measures are not likely to be approved.

#### Voluntary Actions

Whenever popular opinion has been aroused and the legislatures are considering the passage of bills to restrict outdoor advertising, the suggestion is made that voluntary cooperation be used instead. Voluntary cooperation means a gentlemen's agreement between the outdoor advertising companies and the appropriate state legislature. The agreement is usually made that if the legislature will agree not to pass the particular bill under discussion, then the outdoor advertising companies will refrain from placing their boards in certain locations.

Pennsylvania and New York State, among others, have experimented with voluntary cooperation. As reported in the February 1950 Roadside Bulletin, the campaign in both states

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<sup>59</sup>Levin, op. cit., p. 86.

was a failure.<sup>60</sup> The reasons for failure were almost identical. The associations of outdoor advertisers which agreed to cooperate unfortunately did not control all the advertising. The companies not belonging to an association continued to place their advertisements in restricted areas and gained a virtual monopoly because other companies were not using these locations. When all the signs could not be removed, the campaign completely lost its effectiveness.

Special agreement in land purchase contracts.--In a few instances it may be possible to include special agreements in land purchase contracts. This is likely to occur where the governmental body has no authority to purchase a scenic easement. The property owners are persuaded to include in the land purchase contract, which involves only that land actually needed for highway construction, an agreement that they will not lease their land (adjacent to the highway) for outdoor advertising purposes. As a consideration, the owners are given a token sum of money in addition to the regular purchase price of the property. A similar arrangement was worked out by the Oregon State Highway Department in relocating a 12 mile strip of highway which had a 220 foot right-of-way and control of access.<sup>61</sup> However, it is not known whether the

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<sup>60</sup>National Roadside Council, "Can Voluntary Cooperation Check the Roadside Blight?" The Roadside Bulletin, February, 1950, pp. 13, 16.

<sup>61</sup>David R. Levin, "Report of the Committee on Land Acquisition and Control of Highway Access and Adjacent Areas," Highway Research Board Bulletin, No. 18, April, 1949, p. 13.

land owners were paid an additional sum of money for the agreement.

Tennessee Valley Authority agreement.--In constructing the access road from the main highway to the Norris dam site, the Tennessee Valley Authority was able to work out an agreement with the owners of property adjacent to the road. In return for the right to use the right-of-way beyond the pavement for agricultural purposes, the property owners agreed not to lease their lands adjacent to the road for outdoor advertising purposes.

#### Conclusion

Methods of state regulation of outdoor advertising vary considerably in both type and effectiveness. Perhaps the most efficient and effective means are possible when using the power of eminent domain. However, all such measures are usually expensive when used extensively and, therefore, widespread use is impossible. An adequate method for the regulation of outdoor advertising does seem to be available through the use of a more comprehensive type of statute which regulates all phases of outdoor advertising activity. A review of some of the state regulations indicates that there are still unsolved problems in the provisions relating to scenic views, business districts and spacing and size restrictions.

## CHAPTER IV

### LOCAL REGULATIONS

There are two types of municipal ordinances generally used for the regulation of outdoor advertising: (1) the single purpose outdoor advertising ordinance and (2) the zoning ordinance, both of which will be discussed in this chapter.

#### The Outdoor Advertising Ordinance

In many respects the local outdoor advertising regulations are similar to the state statutes. They are organized in somewhat the same manner and contain many of the same provisions. The state regulation places an obvious emphasis on the roadside in unincorporated areas while the municipal ordinance usually relates to the entire area of the city.

Within the scope of this research, no county outdoor advertising ordinances were noted. Evidently any such measures adopted by counties are usually included in the county building code or zoning ordinance.

#### Administration

The administration of the local outdoor advertising ordinance differs from the state version in that enforcement is usually provided through the offices of the building in-

spector and the electrical department. In addition, no administrative rules and regulations are provided other than those contained within the body of the ordinance. However, they are usually in sufficient detail to provide full administration of the ordinance.

#### License and Permit Requirements

License and permit provisions are usually similar to those contained in the state acts, and it would therefore be pointless to include a lengthy discussion of these provisions. There are a few differences in the provisions relating to licenses. In some cities the license fee is referred to by other names. For example, the Kansas City Ordinance requires the payment of an annual "registration fee" of \$50.<sup>1</sup> There does not seem to be any reason for this, unless Kansas City is prohibited from levying a license tax.

In other jurisdictions, the license provisions were excluded from the outdoor advertising ordinance and were made a part of a separate license ordinance. The City of Berkeley, California, has the following provision in its outdoor advertising ordinance: "The fees required to be paid by this ordinance shall be in addition to any business license tax required to be paid by the license ordinance of the City of Berkeley."<sup>2</sup>

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<sup>1</sup>Kansas City, Missouri, Revised Ordinances, 1946, as amended through September, 1949, Chapter 2, Article 3, Section 2-34(a).

<sup>2</sup>Berkeley, California, Ordinance No. 2393--N.S., amended through July, 1951, Section 8 (e).



### Posting Bond

Evidently the requirement for posting bonds to insure compliance with local regulations is not a standard provision in the outdoor advertising ordinance. Whether this provision is usually made part of another ordinance is not known. Of the ordinances reviewed, only one contained a bond requirement. The Kansas City ordinance requires all persons engaged in the business of outdoor advertising to file a bond of \$5000 with the Commissioner of Buildings and Inspections.<sup>3</sup> In addition, such persons are required to file a liability insurance policy of \$20,000; bodily injury limits of liability of \$40,000; and property damage limits of liability of \$20,000.

If any signs are erected by a property owner, tenant or lessee to advertise exclusively his place of business (not by a sign contractor registered to do business), the owner is required, during the erection and removal of any such sign, to file a liability insurance policy of \$5000; bodily injury limits of liability of \$10,000; and property damage limits of liability of \$5000. Evidently, in this instance, no insurance is required during the period the sign is in place.

### Structural and Electrical Requirements

The sections relating to structural and electrical re-

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<sup>3</sup>Kansas City, op. cit., Section 2-34 (b).

quirements are a major part of the municipal ordinance; and, in this respect, it differs considerably from the state regulation. In some instances, the local ordinances contain elaborate provisions, spelling out in detail how the various types of signs are to be constructed. The structural and electrical provisions are either included within the sign ordinance or they are adopted as parts of the local building and electrical codes.

It should be understood that there are many structural and electrical provisions sometimes included in municipal outdoor advertising ordinances. However, the provisions which are summarized below represent the major items usually adopted. Working from these, it should be possible for a municipality to draft adequate structural and electrical requirements to meet its individual needs.

Building codes.--Probably the easiest and best way to handle the provisions relating to structural requirements is to insert a statement in the outdoor advertising ordinance designating the local or national building code as the governing regulation for all signs and billboards. The City of Louisville, Kentucky has inserted such provisions in its Sign Code.<sup>4</sup> Electric signs are required to conform to the Electric Code of the City; and all ground, wall, projecting, marquee and roof signs are required to conform to the local Building Code.

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<sup>4</sup>Louisville, Kentucky, General Ordinances, revised through 1954, Chapter 35, Sections 35-4, 6, 7A, 9, 10.

In most cities the building code is patterned after or copied verbatim from either: (1) the National Building Code;<sup>5</sup> (2) the Southern Standard Building Code;<sup>6</sup> or (3) the Uniform Building Code.<sup>7</sup> The major provisions from the National Building Code are summarized below:

Signs are required to withstand a horizontal wind pressure (in pounds per square foot) varying with the height from the ground to the top of the sign and with the type of sign, whether solid or open. Signs up to 30 feet in height must be built to withstand a pressure of 15 pounds if solid, 25 if open; signs from 31 to 50 feet in height must be built to withstand a pressure of 25 pounds if solid, 35 if open. Signs from 51 to 99 feet in height must be able to withstand 30 pounds if solid and 42 if open. Signs from 100 to 199 feet in height must be able to withstand 35 pounds if solid and 49 pounds if open. Finally, signs from 200 to 299 feet in height must be able to withstand 38 pounds if solid and 53 pounds if open.

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<sup>5</sup>National Board of Fire Underwriters, National Building Code, 1949 Edition, New York: National Board of Fire Underwriters, 1949, pp. 67, 155-156.

<sup>6</sup>Southern Building Code Congress, Southern Standard Building Code, Revised 1953-54, Birmingham: Southern Building Code Congress, 1954, Chapter 12, p. 6; Chapter 23, pp. 1-7.

<sup>7</sup>Pacific Coast Building Officials Conference, Uniform Building Code, 1952 Edition, Los Angeles: Pacific Coast Building Officials Conference, 1952, pp. 1-340.

Signs with 70 per cent or more of their gross area (from the overall dimensions) exposed to the wind are considered to be "solid." Where the exposed area is comprised of open letters, figures, strips and structural framing members and is less than 70 per cent of the gross area, the signs are considered to be "open."

Wall signs may not project more than 15 inches from the wall surface and may not exceed 40 square feet in area unless made of noncombustible materials. These signs may not extend beyond the top or ends of the wall surface on which they are placed. Furthermore, they must be securely attached to the building by means of metal anchors, bolts or expansion screws and shall not be fastened by nails or staples to wooden blocks or nailing strips built into the masonry. Ground signs may not exceed 30 feet in height above the ground on which they are constructed. Lighting reflectors are permitted to project beyond the face of the sign. An open space at least three feet high must be maintained between the bottom of the sign and the ground, although the necessary supports and lattice-work or slats leaving the space at least 50 per cent open are permitted. Within the fire limits of the city, ground signs more than 13 feet high must be constructed of noncombustible materials.

Roof signs placed or supported on top of a building or structure must be constructed of noncombustible materials. There must be an open space of not less than six feet below

the bottom of the sign except for the necessary vertical supports. Within the fire limits of the city, roof signs shall not be supported by or braced to wooden beams or other wood construction of a building or other structure over 40 feet in height.

Signs must be so placed that they do not interfere with a required doorway or other means of egress or so as to prevent free passage over any part of the roof on which constructed.

Electrical codes.--The municipal electrical code is similar to the building code in that the provisions are usually adapted from a model such as the National Electrical Safety Code.<sup>8</sup> The provisions from this Code pertaining to signs are summarized below:

Electrical signs at elevations greater than 30 feet above a roadway or pathway or at an elevation above a roof greater than the distance from the edge of the roof must, if they require attention, be provided with substantial and safely accessible runways, ladders and platforms from which all replacements or adjustments can be made. Safety belts are to be supplied for workmen.

Electrical signs located outside of a building are to have no ungrounded current-carrying parts normally exposed to contact. All exposed noncurrent-carrying metal parts are

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<sup>8</sup>U. S. Department of Commerce, National Electrical Safety Code, Fifth Edition, Washington: Government Printing Office, 1948, Part 1, pp. 287-288.

to be effectively grounded unless they are insulated from the ground and other conducting surfaces and are inaccessible to unauthorized persons. (This does not apply to portable incandescent lamp-type signs.)

Electrical signs, other than portable, must be provided with switches arranged to entirely disconnect all ungrounded supply wires of signs and either located within sight of the sign or arranged so that they can be locked in an open position.

Electrical signs with changeable connections shall be so arranged that the connections may be changed manually but only by approved connectors. Approved connectors are required to interrupt all ungrounded conductors of the circuit.

#### General Provisions

The general sign provisions differ somewhat in organization from those contained in the state regulations. Where the municipality has a zoning ordinance in effect, the outdoor advertising ordinance frequently contains a statement designating it as an additional means for regulating signs and billboards. The municipal ordinance contains regulations for ground, wall and roof signs whereas the state regulation pertains primarily to ground structures, although others are sometimes included.

Certain outdoor advertising prohibited.--Signs are usually prohibited completely from public property; from any location where they interfere with reasonable ingress or egress from a door, window or fire escape; from any location where they may interfere with traffic devices or obstruct the view by reason of their position, shape, color or lighting effects and from in front of any established setback line. The Kansas City ordinance contains substantially these provisions.<sup>9</sup> Signs other than nameplates and real estate signs are usually prohibited from residential areas, but where a municipality does not have a zoning ordinance, a provision may be included prohibiting outdoor advertising within prescribed distances from dwellings.

In addition, the municipal ordinance may contain provisions prohibiting signs over a prescribed size or spacing. The Berkeley, California, ordinance prohibits signs with an advertising surface more than 10.5 feet in height or an ornamental moulding or cornice over two feet in width.<sup>10</sup> Letters, figures or characters are permitted to be attached to the billboards but they must not extend more than 5.5 feet above the ornamental moulding and the total solid area of such objects is limited to 40 per cent of the total advertising surface. The total surface area of any one such figure may not exceed 10 per cent of the total advertising

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<sup>9</sup>Kansas City, op. cit., Section 2-38.

<sup>10</sup>Berkeley, op. cit., Section 13.

surface and the total solid area of all such objects may not exceed 200 square feet.

Ground signs.--Ground signs are usually regulated as to size, spacing, height, screening and setback. The Kansas City ordinance requires an open space of not less than two feet between the lower edge of the signboard and the ground which may be filled in with latticework.<sup>11</sup> In addition, where the rear and braces are within 75 feet of the curb line of any street other than the one upon which the sign faces, they must be screened by latticework, upon the direction of the Commissioner of Buildings. No sign is to be placed on any property adjacent to the intersection of streets where it would obstruct the vision from a point 50 feet back from the intersection. The owner of any property on which a sign is placed and the person maintaining the sign are held equally responsible for the general condition of the area around the sign.

The Louisville ordinance has substantially the same requirements; but, in addition, signs made of wood material are limited to 15 feet in height above the ground level, whereas signs constructed of sheet metal or other approved material may be erected to the limiting height in the zoning ordinance. Any sign over 35 feet in height must be made entirely of metal.

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<sup>11</sup>Kansas City, op. cit., Section 2-42.



The San Bernardino, California, ordinance requires the base of a billboard to be not less than 18 inches or more than eight feet above the ground level.<sup>12</sup> Signs are required to be erected at least four feet from the adjoining property line when the property contiguous thereto is occupied by a building with openings immediately opposite and which are within four feet of the property line. Furthermore, any sign exceeding 30 square feet in area must be constructed to withstand a wind pressure of 20 pounds per square foot of exposed surface. The total area of all signs erected on a single pole standard shall not exceed 42 square feet but double pole signs, designed by a structural engineer, may exceed this area.

The municipal regulation may require a ground, wall, or roof sign to set back a specified number of feet from the right-of-way, pavement or the center line of a throughway, expressway or parkway, whatever the case may be. The City of Portland, Oregon, has a provision in its Planning and Zoning Code which enables the Council to designate a throughway pursuant to the provisions of Chapter 226, Oregon Laws, 1947; and where such throughway is, or is intended to be, landscaped within five years, they may establish a setback in front of which no sign or billboard may be erected.<sup>13</sup> Ac-

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<sup>12</sup>San Bernardino, California, Ordinance No. 1911, 1951, Sections 3, 13.

<sup>13</sup>Portland, Oregon, Planning and Zoning Code, amended through June, 1953, Article 11.

cordingly, an ordinance was passed designating the T. H. Banfield Expressway as a throughway and establishing a setback of 500 feet from the traveled roadway along certain portions of the same.<sup>14</sup> Specifically excluded from the provisions of the ordinance were: real estate signs, nameplates, identification signs, business signs and signs not visible to persons traveling on the throughway. Similar ordinances are in effect in Los Angeles, California; Denver, Colorado; and Atlanta, Georgia.

Wall signs.--The regulations most frequently used for wall signs restrict their height, area, location, and projection. The provisions of the Louisville ordinance are typical and are quoted below:<sup>15</sup>

No wall sign shall extend beyond the public way more than twelve (12) inches, and no such projection including reflectors or any obstruction at its lowest point shall be less than nine (9) feet above the sidewalk level. However, if the sign is illuminated, the lighting reflectors may project six (6) feet over the public way, but in no case shall they be nearer than two (2) feet to the curb line. . . . No wall sign shall project beyond the side of the building to which it is secured unless the projection meets the requirements for projecting signs, nor shall it project more than four (4) feet above the roof level or fire wall of the said building. Wall signs when attached to a building at more than thirty (30) feet above the ground level shall be constructed entirely of metal, and no wooden sign, when attached to a building, shall be more than two (2) feet in width. . . .

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<sup>14</sup>Portland, Oregon, Ordinance No. 98485, 1953, Sections 1, 2.

<sup>15</sup>Louisville, op. cit., Section 35-6.

The Kansas City ordinance limits the area of flat wall signs to 100 square feet unless they are made of sheet metal.<sup>16</sup>

Roof signs.--The regulations for roof signs customarily restrict the height, spacing, setback and location of such signs. In Kansas City roof signs are required to set back four feet from the face of any front, rear or side wall of a building (where the side wall is on a street frontage) upon which the sign is erected.<sup>17</sup> Where a sign is placed diagonally, the ends may come within 12 inches of the building line. The lighting reflectors from an illuminated sign may project eight feet into a public space if they are not less than 12 feet above the sidewalk or 15 feet above the roadway.

Signs with a solid surface are limited to a height of 50 feet above the roof level; but where they do not have a solid surface, they may be erected to a height of 75 feet, provided they are erected upon fire-proof buildings. When constructed upon non-fireproof buildings, signs not having a solid surface may be erected to a height of 60 feet above the roof level; but the covered portions of such signs may not exceed 45 per cent of the area thereof.

In addition to many of the above provisions, the San Bernardino ordinance prohibits the erection of temporary signs upon or over any roof and limits the length of all per-

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<sup>16</sup>Kansas City, op. cit., Section 2-43.

<sup>17</sup>Ibid., Section 2-41.

mitted roof signs to 50 feet.<sup>18</sup>

Exceptions.--As in the state regulations, certain types of signs are excepted from the municipal sign regulations. The list of exceptions are usually similar with each one being adapted to the particular needs of the city. Kansas City has a typical list which excepts the following:<sup>19</sup> (1) painted wall accessory-use signs; (2) nameplates; (3) miscellaneous traffic and municipal signs, (4) bulletin boards; (5) real estate signs; (6) signs embedded or set into a building and so erected as to become a permanent part of the building; (7) wall signs of less than a 50 square foot area (only accessory-use); (8) announcement signs; and (9) accessory-use ground signs.

#### Conclusion

The comprehensive outdoor advertising ordinance, when used in conjunction with zoning to achieve location control, seems to be the best method for the municipal regulation of outdoor advertising. It encompasses all phases of sign control and places the entire administrative function within a single agency.

The ordinances reviewed did not contain adequate provisions for some phases of sign control. Nowhere was a provision noted which limited the number of signs which could be erected within an area. Theoretically, without such a

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<sup>18</sup>San Bernardino, op. cit., Section 17.

<sup>19</sup>Kansas City, op. cit., Section 2-33.

provision, any number of roof signs and wall signs may be erected in business areas which could well have a harmful effect upon the general appearance of the district. Also, the provisions restricting the size of large roof structures seem to need more study. It is doubtful if the provisions reviewed adequately restrict the size of roof signs and spectaculars to insure their appropriate appearance upon any size of building. With increasing acceptance of the esthetic concept, municipalities will need to give more consideration to this type of regulation.

#### The Zoning Ordinance

Zoning is the regulation of the use of land and the structures thereon, the height and bulk of buildings, the size of yards and other open spaces and the density of population. As a police power regulation, zoning must be authorized through proper state enabling legislation. This power may be granted to all municipal and county governments, or it may be authorized for selected ones only.

Zoning power is usually sufficiently broad to make possible its effective application to the regulation of outdoor advertising. This application may be part of a municipal or county zoning act or there may be a separate roadside zoning ordinance. The municipal and county ordinances will have outdoor advertising and other provisions for the entire urban area, whereas the roadside zoning ordinance may regu-

late only those areas adjacent to the roadway. Before examining these ordinances in more detail, mention should be made of the interim zoning ordinance.

#### Interim Zoning Ordinance

As a temporary emergency, a city or county which lacks a comprehensive zoning ordinance may have need to pass an interim measure to prevent further undesirable development within the city limits or along its highways. Such a measure should not be passed unless there is a real emergency and unless a serious effort is being made to prepare a comprehensive ordinance. An interim ordinance, for example, might provide for the exclusion of further advertising signs from any area which is predominantly agricultural. California probably has been more active in protecting its highways through interim zoning ordinances than any other state. Several of its counties have protected new highways on which construction was just starting by the use of the interim ordinance.<sup>20</sup>

#### Municipal Zoning Ordinance

Several hundred zoning ordinances from various parts of the country have been reviewed to ascertain what provisions are being used to regulate signs and billboards. The multiplicity of provisions found makes it impossible to give a

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<sup>20</sup>National Roadside Council, "Progress in Highway Protection Secured through County and Town Zoning," Roadside Bulletin, December, 1946, p. 4.

detailed analysis of the results. Some provisions were the same or similar to those found in the comprehensive outdoor advertising ordinance and where they have been previously discussed, such regulations will not be repeated. In general, the provisions for the various use districts followed a describable pattern. Where this occurred, a brief summary will be given with one or two typical examples of provisions. In what seemed to be the problem areas -- where there was no general agreement -- a more detailed discussion will be provided. In either case, no attempt will be made to describe all the provisions or variations encountered.

Residential districts.--Almost without exception, separate-use outdoor advertising structures are prohibited and nameplates, bulletin boards, identification and real estate signs are a permitted use in residential districts. The major differences in the provisions for the permitted signs relate to size, although there are no great variations. Size limitations are usually presented in square feet. The Alexandria, Virginia ordinance is a typical example:<sup>21</sup>

No sign or signs shall be permitted in any residential zone other than a nameplate, not exceeding one (1) square foot in area, for the purpose of advertising a home occupation or professional office and which bears only the name and occupation of the occupant of the building; provided that church bulletin boards, not to exceed twenty (20) square feet in area and apartment or apartment hotel signs not to exceed forty (40) square feet in area may be erected

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<sup>21</sup>Alexandria, Virginia, Code, n. d., Chapter 28, Article 9, Section 1.

or displayed when located entirely on private property and not less than ten (10) feet from any lot line; and provided further that one sign not to exceed twelve (12) square feet in area, advertising the sale or lease of real estate, may be erected on the property so advertised. The illumination of any sign in a residential zone shall be by indirect means only.

Some cities have more detailed provisions for real estate signs, recognizing that subdivisions may require larger signs than individual lots of small size. The San Francisco Ordinance provides that for sale or lease signs may be six square feet per each lot or for each three thousand square feet contained in the parcel advertised, but not to exceed one hundred and eighty square feet.<sup>22</sup>

Business and commercial districts.--Nearly every ordinance makes a distinction between accessory-use and separate-use signs or billboards in its business and commercial districts. Accessory-use signs are permitted in business and commercial districts almost without exception. However, most ordinances place some limitation on the size of these signs, either: (1) specifying the maximum area as a percentage of the total wall area; or (2) prescribing a maximum area per linear foot of wall. The Shelton, Connecticut, Ordinance specifies that signs painted on or affixed to a wall, or mounted on a roof are not to exceed an aggregate of 10 per cent of the gross wall area of the elevation of the building on which such

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<sup>22</sup>San Francisco, California, Proposed Zoning Ordinance, 1952, Section 18-E.



signs are affixed or painted.<sup>23</sup> Those mounted on and extending out from the wall are not to exceed two feet multiplied by the height of the building. Signs not mounted on a building are not to exceed forty square feet. With respect to the second type, the Town of Hempstead, New York, provides:<sup>24</sup>

One (1) sign, attached to or incorporated in each building wall on a public street and advertising only the business conducted in such building, when such sign does not:

- I. Exceed in area two (2) square feet for each horizontal foot of such wall, and
- II. Exceed in width ninety (90%) per cent of the horizontal measurement of such wall, and
- III. Project above the portion of the roof on which such sign is located, and
- IV. Project more than one (1) foot from such wall.

There is no such uniformity in the provisions relating to separate-use advertising structures. In a few instances, they are prohibited within the city completely as in the Borough of Raritan, New Jersey, where outdoor advertising structures are excluded from all nine use districts. Miami, Florida, prohibits "snipe" signs anywhere within the city limits. Not quite as strict is the Greenwich, Connecticut, ordinance which prohibits outdoor advertising structures from all residential and all business zones other than the general

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<sup>23</sup>Shelton, Connecticut, Ordinances, Chapter 16, Section 6.1.14.

<sup>24</sup>Hempstead, New York, Building Zone Ordinance, 1930, as amended to 1942, Article 10, Section S.2.1. (b).

business district.<sup>25</sup> The Denver, Colorado, ordinance limits billboards to "B-4 and B-5 districts," which contain warehousing, retail, and business services of all kinds.<sup>26</sup> In still other ordinances, outdoor advertising structures are prohibited from local and retail business districts. Ann Arbor, Michigan, and Bloomington, Indiana, are two cities incorporating this type of provision. A more complete discussion of outdoor advertising in neighborhood shopping centers will be found in Chapter Six. Finally some cities, such as San Francisco, California, permit outdoor advertising structures in all business and commercial districts.<sup>27</sup>

Where outdoor advertising structures are permitted, there is some variety in the regulations. New York City prohibits advertising signs within 200 feet of an arterial highway shown as a principal route on its Master Plan.<sup>28</sup> Lexington, Kentucky, has a provision which permits billboards or signboards in its business two, three and four districts provided that no such structure is permitted which faces the front or side of a lot in a residential district when within

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<sup>25</sup>Greenwich, Connecticut, Zoning Ordinance, 1947, as amended to 1952, Sections 6, 10, 10.1, 11, 12.

<sup>26</sup>Denver, Colorado, Zoning Ordinance, 1955, Section 613.

<sup>27</sup>San Francisco, op. cit., Sections 111-114, 120.

<sup>28</sup>New York, New York, Zoning Resolution, No. 751, amended to 1950, Section 21-B.

100 feet of the lot lines, or which faces a public parkway or entrance to a public park, school, library, church or similar institution and which is within 300 feet.<sup>29</sup> The Des Moines, Iowa, ordinance has a similar provision and further provides that all billboards shall set back from the right-of-way line at least as far as the front yard depth of the principal building except at intersections where the setback will be a minimum of 100 feet from the right-of-way line.<sup>30</sup>

Miami, Florida, set a maximum of 400 square feet on the area of outdoor advertising structures in Business one and two districts.<sup>31</sup> Other cities have set maximum sign areas, but generally the limit is so high that the regulation is not a restrictive one.

Provisions pertaining to roof signs generally follow the pattern of those discussed under structural requirements in the comprehensive outdoor advertising ordinance. A few additional or different provisions have been noted. University City, Missouri, prohibits signs of any type on the roofs of buildings in its second commercial district except where they are constructed of open wire mesh or open letters and are approved by the Building Commissioner.<sup>32</sup> Des Moines,

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<sup>29</sup>Lexington, Kentucky, Proposed Zoning Resolution, 1953, Article 13.14.

<sup>30</sup>Des Moines, Iowa, Ordinance No. 5453, 1953, Chapter 2-A, Section 42.

<sup>31</sup>Miami, Florida, Ordinance No. 1682, 1937, Article 13, Section 3.

<sup>32</sup>University City, Missouri, Municipal Code, 1950, Chapter 20, Article 2002.6.

Iowa, permits roof signs in its third commercial district providing they do not exceed 40 per cent of the building height measured above the roof line.<sup>33</sup> The maximum height limit for roof signs is 50 feet above the roof line or 16 feet for those buildings less than 40 feet in height.

Alexandria, Virginia, permits roof signs in the second and third commercial districts providing they do not exceed 100 square feet in area when facing any street frontage.<sup>34</sup>

Special provisions for signs at filling stations or public garages were noted infrequently. Lexington, Kentucky, has such a provision which permits signs with an aggregate area up to 100 square feet to be located within the required front yard except when they are within 12 feet of a street lot line or within 50 feet of a residential lot line unless the sign is located on a building.<sup>35</sup>

A few cities, such as North Adams, Massachusetts, have regulations which are so comprehensive that they are more like a separate outdoor advertising ordinance. As such, their provisions have been discussed in another section of this work.

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<sup>33</sup>Des Moines, op. cit., Section 2A-42.

<sup>34</sup>Alexandria op. cit., Section 2(d).

<sup>35</sup>Lexington, op. cit., Section 19.32.

Industrial districts.--The majority of zoning ordinances permit outdoor advertising structures in all industrial districts. When permitted, the advertising structures are regulated in a similar manner to signs and billboards in business districts, and to discuss them further would only be repetitious. Generally such ordinances provide for front-yard setbacks and setbacks from the intersection of roadways; they prohibit signs facing residential or other public areas when within a specified minimum distance; they frequently specify maximum heights and areas for roof signs; and they prohibit flashing and intermittent lighting in areas where they may constitute a nuisance.

Non-conforming uses.--Some municipal zoning ordinances contain provisions for the elimination of non-conforming uses. They usually include a section requiring conformance or elimination within a specified period of time. Los Angeles, California, has a provision which permits the continuation of a non-conforming sign or billboard provided that no structural alterations are made and that all such structures are completely removed not later than five years from the effective date of the ordinance.<sup>36</sup> Miami, Florida, requires the removal of non-conforming signs within four years from the effective date of its ordinance.<sup>37</sup>

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<sup>36</sup>Los Angeles, California, Ordinance No. 90,500, as amended to and including Ordinance No. 100, 146, 1952, Chapter 1, Article 2, Section 12.23 - C3.

<sup>37</sup>Miami, op. cit., Section 4.

## County Zoning Ordinance

County zoning has been used to facilitate the development of rapidly growing suburban communities. The location of the Atomic Energy Commission Plant near Augusta, Georgia, for example, caused a tremendous influx of people to that area. As a result, Augusta and Richmond County enacted a comprehensive zoning ordinance to assist both units of government in regulating future land-use development.

Where counties are largely undeveloped and it is not likely that they will change in the future, the main concern of the provisions relating to outdoor advertising will be with the various accessory-use signs. Only when an urban area develops to the point where outdoor advertising companies find it profitable to erect their structures will there be a need for extensive regulations to guide the use and further development of the advertising medium.

The regulation of outdoor advertising by county zoning is divided into two categories: (1) comprehensive county zoning and (2) roadside zoning. The comprehensive county ordinance zones an entire county in much the same way that a municipal ordinance does a city. In other cases the county zoning ordinance may cover only a portion of a county, such as the urbanized area surrounding an incorporated city in the county. Sometimes, depending upon the type of ordinance, the number of districts is smaller in the county ordinance; but the types of districts and their provisions are similar. The dif-

ference as far as outdoor advertising provisions are concerned is one of degree. The types of regulations are the same but the specific requirements are usually more lenient in the county area. Because of the similarity, there is no need to cite examples of these provisions.

Roadside zoning.--The development of roadside zoning has been a natural extension of zoning powers. Certainly a large number of the problems confronting rural areas are related to the roadside and its development. A drive along almost any highway leading away from a city or town will reveal some of these problems. The descriptions of scattered string development are so familiar that they do not need repeating.

Outdoor advertising, as one of the familiar roadside features, has been the subject of much discussion in the consideration of roadside controls. As roadside zoning has become more acceptable, the use of this instrument has been suggested repeatedly as a means for the regulation of outdoor advertising.

Roadside zoning is customarily the establishment of a zoned area extending anywhere from 500 feet to 1000 feet on each side of the highway right-of-way. Within this zoned area, the land is divided into districts primarily for residential, industrial, agricultural, and business use. To be effective, a proper balance must be obtained among all the uses of land. One of the purposes of this type of ordinance is to assist in developing a logical land-use pattern which

will include all the uses of land, rather than just one with the exclusion of the others.

Roadside zoning should not be a piecemeal type of regulation. Its greatest effectiveness will be achieved when it is used in conjunction with other tools of planning. An effective planning program should have as its basis a comprehensive plan which has developed from thorough studies and sound planning principles. To do the job which is intended, then, roadside zoning must be related to at least a county land-use plan. In this way, even though a small strip along the highways is the only land regulated, the roadside zoning ordinance will be the first step in achieving a more comprehensive type of regulation.

The provisions relating to outdoor advertising in the various use districts of the roadside zoning ordinance would be much the same as those found in a county or municipal ordinance and therefore they will not be discussed again. However, there is a variation in the treatment of the business districts and a special problem in the case of agricultural districts. The problem in the latter district will be discussed in Chapter Six.

The roadside zoning ordinance usually makes a distinction between the types of roadside businesses, there being either: (1) a roadside service district or (2) a general commercial district. The roadside service district is intended primarily for uses which serve highway traffic, such as



gasoline stations, roadside eating establishments, motels and truck stops. As such, their outdoor advertising provisions are similar to those for a neighborhood shopping center as prescribed in a municipal ordinance.

The general commercial district serves the roadside traffic and a neighboring community as well. The provisions for outdoor advertising in these districts would be similar to those found in an intermediate business district or a community shopping center as defined in a municipal ordinance.

#### Conclusion

Whether zoning may be used to regulate outdoor advertising is no longer open to question. The legality of zoning has been established, and at the present time, it seems to be one of the better ways to regulate outdoor advertising. Because it deals with uses, zoning cuts through to the heart of the problem -- whether land may be regulated so as to permit signs and billboards in any area, or only in areas which are suited to their particular characteristics. From the review of zoning provisions, it is obvious how the problem has been answered and legislated up to this time. However, considering the impact of the automobile on present day civilization and considering the relative youthfulness of the zoning movement, it would be foolhardy to predict that future zoning provisions relating to outdoor advertising will remain anything like those found at present.

In some areas, the problem seems to be fairly well resolved. Certainly the majority of people no longer question the right to exclude separate-use outdoor advertising signs from residential districts, or in areas adjacent to parks, schools, churches and playgrounds in either rural or urban areas. Likewise, few people question the permitted use of signs and billboards in central business districts or in commercial and industrial districts. The remaining areas of contention seem to be focused on the rural roadside and the neighborhood shopping centers.

At least one area may become more of a problem in the future. With the continued trend for large industrial districts to be located in suburban areas, the time may come when billboards are no longer acceptable as a permitted use. Many of these developments have been located on spacious, well landscaped sites in a conscientious effort to harmonize their location with the surrounding residential area. The character of these developments is becoming more residential and less the bustling business enterprise in which the billboards most often find a suitable location.

There are limits to the effectiveness of zoning in regulating outdoor advertising. Because zoning is subject to the will of the people (and rightly so) and because it is easy to change, a sound ordinance may be rendered completely ineffective by the unwise action of a few people. It is customary in this country for local units of government to handle

matters which are closely related to local problems. This is necessary for the legislative body to discharge its responsibility to the people. The argument has always been put forth that the law making body should have an intimate knowledge of local people and conditions in order to enact measures which will meet the local requirements.

Such a policy may be a disadvantage in administering an effective zoning ordinance for a community or an entire roadside. Conceivably the local unit of government will not be interested in what happens beyond its boundaries, in which case unified roadside control is impossible on the local level. In addition, many communities are slow to adopt regulations. Others yield to the pressure of vested interests and either place properties in a business classification or leave them unrestricted when they should be zoned for another use. Whenever this happens, zoning is no longer a useful tool for the regulation of outdoor advertising.

#### Land Subdivision Regulations

The use of land subdivision regulations as a method to control outdoor advertising is indirect; however, it is important enough to mention. Subdivision regulations may be described as a type of control to guide the development of land, usually applied when a land owner divides a tract into lots for the purpose of sale. This type of regulation is frequently referred to as the companion measure to zoning.

Subdivision regulations would probably never contain a specific provision concerning outdoor advertising; but through the use of these regulations, land adjacent to highways can be so developed as to make it desirable for residential use. This tends to alleviate a problem which has confronted planners and highway officials for a long time.

It is a common occurrence for too much land along the highways to be zoned for business. Bergen County, New Jersey, reported, for instance, that the amount of frontage zoned for business in that entire county was 270 feet per person.<sup>38</sup> Assuming 125 feet of frontage per 100 persons as a standard, this excess is obvious.

Through the use of subdivision regulations, land developers can be required to provide a buffer strip along the highway right-of-way and to back their lots up to this buffer strip, so that they face onto an interior street. In this way, the land adjacent to highways can be safely developed for residential use. At the same time, it solves the problem of too much land being zoned for business because there was no other use for which to develop it. This should assist in creating a better balance of land uses along urban highways and will tend to segregate business into natural areas of development, which, of course, will tend to regulate the location of outdoor advertising.

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<sup>38</sup>Bergen County, New Jersey, Planning Board, Zoning in Bergen County, Second Printing, Hackensack: Bergen County Planning Board, 1953, p. 12.

### General Conclusion

The local regulation of outdoor advertising appears to be best accomplished through the use of: (1) the local outdoor advertising ordinance; (2) the zoning ordinance; and (3) land subdivision regulations. No one of these can provide adequate control of all phases of the outdoor advertising problem; but in combination, they offer an efficient and comprehensive means of guiding further outdoor advertising development.

## CHAPTER V

### A REVIEW OF JUDICIAL DECISIONS

Through a long period of litigation the right to regulate and control outdoor advertising has been firmly established. Where the courts have found that the legislative body (either state or local government after appropriate state authorization), had passed regulations to protect the health, safety, morals and general welfare, and that such regulations had a public purpose and were not arbitrary or unreasonable, they generally have upheld them as a proper exercise of the police power. As far back as 1918, in St. Louis Poster Advertising Company v. City of St. Louis, 249 U. S. 269, 39 S. Ct. 274 (1919), it was held that the billboard regulations of that city were not in violation of the constitution, even though the size of billboards was regulated. Another important case was Thomas Cusack Company v. City of Chicago, 242 U. S. 526, 37 S. Ct. 190 (1917), in which the terms of a Chicago ordinance regulating billboards were upheld, the court saying: "A municipal ordinance passed under authority delegated by the state legislature to regulate or control the construction and maintenance of billboards is a valid exercise of the police power unless it is clearly unreasonable and arbitrary." The number of cases which have affirmed these decisions is so great that it would add little to cite more at this time.

Actually the courts have gone further than merely upholding the right to regulate outdoor advertising. There are decisions which approve specific regulatory measures by states, counties, and municipalities. A notable case upholding the right of the state to regulate outdoor advertising is: General Outdoor Advertising Co. v. Dept. of Public Works, 289 Mass. 149, 193 N. E. 799 (1935). A California decision, Monterey County v. Bassett, No. 16909, Superior Court of Monterey County (1938), is important because it upholds the extension of zoning principles to rural areas as a means of billboard regulation. The Appeal of Liggett, 291 Pa. 109, 139 A. 619 (1927) is one of a host of decisions upholding a municipal zoning ordinance including provisions for the regulation of outdoor advertising.

The legality of outdoor advertising regulation in state, county and municipal areas is generally recognized by the courts. However, the validity of roadside zoning, when undertaken pursuant to authority to zone comprehensively, and in the absence of specific authority, is not so definitely established. Zoning for special areas, such as the roadside, depends upon its relation to state enabling statutes. In People v. Roberts, 90 Misc. 439, 153 N. Y. S. 143 (1915); State v. Fowler, 90 Fla. 155, 105 So. 733 (1925); and City of Miami Beach v. Texas Co., 194 So. 368 (1940), it was generally held that without a special grant of authority, zoning ordinances which exclude business from certain road-

ways or districts, are invalid.

In an opinion issued by the Wisconsin Attorney General, 36 Ops. Wis. Attorney Gen. 368 (1947), it was ruled that the zoning of land uses adjacent to the highway could not properly be undertaken as an exercise of the police power. However, this particular opinion referred to the Silent Cross Memorial Highway in Wisconsin. Had the measure been considered as a state-wide application rather than for the specific case of one highway, there might have been sufficient justification for the regulatory measure.

#### Classification

Another principle which has been established over a period of time is the classification of outdoor advertising structures into accessory-use and separate-use categories. The basis for the distinction is relatively simple. Accessory-use signs advertise a product or service located on the same premises as the sign, whereas, separate-use signs may advertise products and services regardless of location. The accessory-use sign is an accepted use of the property while the separate-use sign is not so much a use of the property as it is of the traveled way upon which the sign faces.

There are many cases affirming the distinction between accessory-use and separate-use signs. Two such cases are: People v. Sterling, 267 App. Div. 9 (New York) 1943; and Murphy, Inc. v. Town of Westport, 131 Conn. 292, 40 A. (2d) 177 (1944). Perhaps the distinction was best stated in United



Advertising Corp. v. Borough of Raritan, 93 A. (2d) 362 (New Jersey) (1952) when the court said: ". . . the unique nature of outdoor advertising and the nuisances fostered by billboards and similar outdoor structures located by persons in the business of outdoor advertising justify the separate classification of such structures for the purpose of governmental regulation and restriction." In harmony with this distinction, separate-use structures are recognized as being essentially a use of the public highway rather than private property. Kelbro v. Myrick, et al., 113 Vt. 64, 30 A. (2d) 527 (1943) and General Outdoor Advertising Company v. Department of Public Works,<sup>1</sup> are two of the more recent cases to adopt this viewpoint. The appurtenant easement principle as explained in chapter two, was made the basis for decision in Kelbro v. Myrick.

By far the majority of the litigation concerning outdoor advertising has been in connection with the separate-use outdoor advertising structures. Undoubtedly, this occurs because outdoor advertising companies are constantly seeking new and better locations for their signs and billboards. Frequently the "new areas" are places where there is some question about the appropriateness of the signs and a decision has to be made by the courts. On the other hand, accessory-use signs are legally accepted and there is little question concerning their use.

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<sup>1</sup>Supra, p. 105.

Customarily outdoor advertising regulations contain provisions for both accessory-use and separate-use structures. However, the regulations for accessory-use structures are infrequently tested in court and their importance is more likely to be limited to the instant case. The courts have upheld many ordinances which contained provisions regulating the area, height, location, setback and number of accessory-use signs, although these particular provisions were not being tested. Apparently there is no question concerning validity where the legislative authority is present and the regulations provide reasonable requirements for control. Because of the scarcity of cases actually ruling on accessory-use sign provisions, it would be hazardous to draw conclusions indicating widespread acceptance or rejection of specific points. Therefore, the remainder of this chapter will be devoted to litigation primarily concerning itself with separate-use outdoor advertising structures.

#### Location

The historic case, Thomas Cusack v. City of Chicago,<sup>2</sup> has been important in gaining the acceptance of ordinances regulating outdoor advertising structures by use districts. The Supreme Court of the United States upheld an ordinance restricting signs to 12 square feet in any block where over half of the buildings on both sides of the street are used for residential purposes. In most instances, there are now

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<sup>2</sup>Supra, p. 104.

enough court cases on record to indicate either general acceptance or rejection of ordinances regulating outdoor advertising structures in specific areas.

Complete prohibition.--Statutes and ordinances which have attempted to completely exclude signs and billboards generally have been ruled invalid. In 1905 in the case of Bryan v. City of Chester, 61 A. 894, an ordinance was ruled invalid which prohibited all signs but accessory-use signs and those in existence at the time of passage of the ordinance. Again in Varney and Green v. Williams, 155 Cal. 318, 100 P. 867 (1909), an ordinance was ruled invalid for the same reasons. More recently in Mid-State Advertising Corp. v. Bond, 274 N. Y. 82, 8 N. E. (2d) 286, 291 N. Y. S. 441 (1937) and Ruth v. Village of Colonie, 198 Misc. 608, 99 N. Y. S. (2d) 471 (1950) the Courts ruled invalid two ordinances which prohibited billboards completely. Two cases are on record, United Advertising Corporation v. Borough of Raritan,<sup>3</sup> and Murphy, Inc. v. Town of Westport,<sup>4</sup> which upheld the prohibition of all signs from the city except those relating to a business conducted on the premises. Insofar as the preponderance of decisions to date is concerned, it would appear that to be excluded completely, signs and billboards would have to be declared a nuisance. Outdoor advertising has not been judged to be a nuisance and generally the courts have ruled that a mere declaration by a legislative body does not make it so.

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<sup>3</sup>Supra, p. 107.    <sup>4</sup>Supra, p. 106.

Residence districts.--It is a generally accepted rule that outdoor advertising structures may be prohibited in residential areas. In an early case, Thomas Cusack v. City of Chicago,<sup>5</sup> the court ruled that the exclusion of billboards in residential districts was not unreasonable. The ordinance in question required written consent from the owners of a majority of the property fronting on both sides of the street in certain residential areas as a prerequisite to permitting the erection of advertising signs. The Appeal of Liggett,<sup>6</sup> held that a zoning ordinance excluding advertising signs from residence districts was within the city's police power. More recently in Beckmann, et al. v. Teaneck Township, et al., 79 A. (2d) 301 (1951) and McGuire v. Purcell, 129 N. E. (2d) 598 (1955) the courts have ruled that advertising signs may be excluded from residential districts.

Retail shopping centers.--The trend of court decisions seems to be in the direction of upholding regulations which prohibit or strictly regulate outdoor advertising structures in retail shopping centers. The decisions usually have recognized the distinction between accessory-use and separate-use signs and have upheld the exemption of separate-use signs from these districts. Although both are businesses, a distinction between accessory-use and separate-use signs is made on the basis that the accessory-use sign is advertising the

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<sup>5</sup>Supra, p. 104.      <sup>6</sup>Supra, p. 105.

name and character of a business or a product or service offered on the premises; whereas, the separate-use sign may advertise products and services offered elsewhere. Reasoning similar to this was made the basis for decisions in Criterion Service, Inc. v. City of East Cleveland, 88 N. E. (2d) 300 (1949), refused admission 89 N. E. (2d) 475; Murphy, Inc. v. Town of Westport; <sup>7</sup> and Central Outdoor Advertising Co. v. Evendale, 54 Ohio Opinions 354, 124 N. E. (2d) 189 (1954).

In at least one recent case a court has ruled that billboards may be regulated but not prohibited in retail districts. The decision in State ex rel. Central Outdoor Advertising Company v. Leonhard, 124 N. E. (2d) 187 (1953) indicated that in the absence of standards of regulation, the ordinance which prohibited outdoor advertising in retail business districts was invalid. In the case of Merritt v. Peters, 65 So. (2d) 861 (1953) an ordinance was upheld which limited the size of commercial signs, in limited and special business zones, to forty square feet. Such a strict limitation has substantially the same effect as complete prohibition.

Undoubtedly there is a distinction between accessory-use and separate-use signs. Whether the difference is great enough to justify the complete prohibition of the separate-use outdoor advertising structure in retail shopping centers is a matter on which the courts still have not spoken conclusively. In many respects, the outdoor advertising sign may

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<sup>7</sup>Supra, p. 106.

be compared to a type of business generally permitted in the retail district; namely, dry-cleaning establishments. To begin with, they are both businesses. Both advertise a product or service which is performed at another location. The only recognizable difference is that the dry cleaning establishment advertises, collects and distributes from one location and performs the actual service at another; whereas, the outdoor advertising structure only advertises from one location and performs the service at another.

It would appear more equitable to treat them alike. Instead of prohibiting outdoor advertising signs, they could be permitted subject to regulations which would prevent their being annoying, in much the same way that dry-cleaning stations are prevented from creating difficulties by being required to provide parking and truck loading space on their premises.

Commercial districts.--The use of "commercial districts" in this instance is understood to include both the central business district, its surrounding wholesale area and any other wholesale areas throughout the community. There does not appear to be an established trend of court decisions for the commercial district. In Murphy, Inc. v. Town of Westport;<sup>8</sup> United Advertising Corporation v. Borough of Raritan;<sup>9</sup> and Silvers v. Zoning Board of Adjustment, 381 Penn. 41, 112 A. (2d) 84 (1955) the courts upheld ordinances which excluded

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<sup>8</sup>Supra, p. 106.    <sup>9</sup>Supra, p. 107.

separate-use signs from commercial districts. On the other hand, United Advertising Corporation v. Board of Adjustment of Maplewood Township, 136 N. J. L. 336, 56 A. (2d) 406 (1947); Gilmor v. Mayor of Baltimore, 109 A. (2d) 739 (1954); and People v. Wolf, 127 Misc. 382, 216 N. Y. S. 741, 159 N. E. 906 (1928) all contain court decisions holding invalid ordinances which prohibited separate-use structures in commercial districts. In several other cases the courts have ruled that outdoor advertising signs may not be prohibited from commercial districts at the discretion of the city council or the board of adjustment, unless the board or council has set up adequate standards to regulate them. One recent case of this kind was General Outdoor Advertising Co., Inc. v. Goodman, 262 P. (2d) 261 (1953).

The court decisions reviewed are not conclusive in determining the present status of outdoor advertising in commercial districts. However, the host of decisions invalidating ordinances which absolutely prohibited separate-use outdoor advertising structures in any district clearly indicate that the courts are not willing to accept this form of regulation. The commercial district where all but the nuisance types of businesses are usually permitted would seem to be an acceptable location for outdoor advertising structures.

Industrial districts.--It is generally accepted that outdoor advertising structures are a permitted use in industrial districts, but no cases were found which specifically ruled on

this point. From the number of zoning ordinances which permit outdoor advertising in industrial districts, it may be assumed that this is generally an acceptable location. To assume otherwise, there would have to be a considerable number of ordinances prohibiting outdoor advertising from industrial districts and subsequent court cases upholding their prohibition and such ordinances and cases are apparently non-existent. However, separate-use signs may be out of place in a planned industrial district.

#### License, Permit and Inspection Fees

It is generally understood that states and municipalities may require license, permit, and maintenance inspection fees for outdoor advertising structures. The accepted viewpoint is illustrated by the decisions in Fred Wolferman Bldg. Co. v. General Outdoor Advertising Co., (Mo.), 30 S. W. (2d) 157 (1930) and St. Louis Gunning Advertisement Co. v. St. Louis, 235 Mo. 99, 137 S. W. 929 (1911), appeal dismissed 231 U. S. 761 (1913). In the latter opinion, the court upheld an ordinance on the basis of the general welfare and a general power to tax, license and regulate occupations, professions and trades.

To be acceptable, license, permit and inspection fees must be reasonable in the same sense as any other police power regulations. The legislative body is required to determine what a reasonable fee should be. If the fees required are



challenged, then the burden of proving unreasonableness falls on the person questioning the tax. Such a decision was rendered in Cincinnati v. Criterion Advertising Corp., 32 Ohio App. 472, 168 N. E. 227 (1929).

Most of the litigation has centered around the administrative details of license and permit regulations, although the amount of the tax has been questioned in a number of cases. The Supreme Court of the United States in St. Louis Poster Advertising Co. v. St. Louis,<sup>10</sup> upheld an ordinance requiring an annual fee of \$1.00 for each five lineal feet of advertising board. In the decision, the court stated: "If the city desired to discourage billboards by a high tax, we know of nothing to hinder, even apart from the right to prohibit them altogether. . . ." In Cincinnati v. Criterion Advertising Corp.,<sup>11</sup> an ordinance was held valid which required a permit fee of \$10.00 for each sign containing 70 square feet or less and \$5.00 for each additional 70 square feet. Another provision of the same ordinance required an annual inspection fee of two cents per square foot but in no event less than \$1.00, to be paid whether the inspection was made or not; and this provision was upheld in Cincinnati v. Morton, 58 Ohio App. 485, 16 N. E. (2d) 826 (1938).

An annual license fee of \$360 for revenue purposes was upheld in West Coast Advertising Co. v. San Francisco, 14 Cal. (2d) 516, 95 P. (2d) 138 (1939). However, in Gaynor v. Roll,

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<sup>10</sup>Supra, p. 104.    <sup>11</sup>Supra, p. 115.

79 N. J. L. 402, 75 A. 179 (1910) the court ruled that the power to "license and regulate," as an exercise of the police power does not authorize the imposition of a revenue tax requiring an annual license fee of \$250 and the ordinance in question was ruled void.

A few other administrative questions have been ruled on. A permit to erect an advertising structure is governed by all the regulations in an ordinance and the granting of a permit carries no guarantee that it will be renewed in the future. Such was the opinion in Mallary, Inc. v. New Rochelle, 184 Misc. 66, 295 N. Y. 712 (1946); Preferred Tires v. Hempstead, 173 Misc. 1017, 19 N. Y. S. (2d) 374 (1940); and General Outdoor Advertising Co. v. Dept. of Public Works.<sup>12</sup>

In the case Federal Advertising Corp. v. Hardin, 137 N. J. L. 468, 60 A. (2d) 615 (1948), the court held that a person wrongfully refused a permit to erect a sign may seek remedy by mandamus to obtain the permit. In an old case, Curran Bill Posting Co. v. Denver, 47 Colo. 221, 107 P. 261 (1910), the court held that an ordinance was unconstitutional which permitted the administrative official to exercise arbitrary discretion in granting permits without any guiding standards.

#### Setbacks and Spacing

Through the years the courts have changed their opin-

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<sup>12</sup>Supra, p. 105.

ions with regard to setback regulations. The early cases generally held that setback requirements were unconstitutional because they had no reasonable relationship to the police power. Passaic v. Patterson Bill Posting, Advertising and Sign Painting Co., 72 N. J. L. 285, 62 A. 267 (1905) is a case in which the court ruled void an ordinance which required billboards to set back 10 feet from the street line. Other similar cases are Crawford v. Topeka, 51 Kan. 756, 33 P. 476 (1893) and Chicago v. Gunning System, 214 Ill. 628, 73 N. E. 1035 (1905). A few years later, the courts began to change their viewpoint, and now they recognize that setbacks may be related to the police power. The acceptance of setback provisions in zoning ordinances for houses and other structures has contributed much to the recent advancement of this attitude.

Streets and Highways.--Two of the earliest cases to approve setback regulations were Cream City Bill Posting Co. v. Milwaukee, 158 Wis. 86, 147 N. W. 25 (1914), where the court approved an ordinance which required a sign to set back from the street line a distance at least equal to the height of the billboard; and St. Louis Poster Advertising Co. v. St. Louis,<sup>13</sup> where a 15 foot setback was held valid. Then, in Town of Milton v. Donnelly, 306 Mass. 451, 28 N. E. (2d) 438 (1940) the court upheld an ordinance requiring all billboards exceeding five feet in height and eight feet in length to set back 300 feet from the public way.

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<sup>13</sup>Supra, p. 104.

In 1935, in General Outdoor Advertising Co. v. Dept. of Public Works,<sup>14</sup> the court approved a regulation requiring a 50-foot setback from the highway for all separate-use outdoor advertising signs, a 100 foot setback if the sign was within view of any portion of the highway and over 32 square feet in area, and a 300 foot setback if the sign exceeded 25 feet in length and 12 feet in height. In any event if the sign exceeded 50 feet in length and 12 feet in height, except a sign not exceeding a 40 foot length and a 15 foot height, it was to be set back at least 300 feet. Then in Kelbro v. Myrick,<sup>15</sup> a regulation was ruled valid which required a 240-foot setback from the center of the highway. Finally, in the two recent cases, Hav-A-Tampa Cigar Co. v. Johnson, 5 So. (2d) 433 (1942), and John H. Swisher and Son v. Johnson, 5 So. (2d) 441 (1942), a Florida ordinance was upheld which provided for a 15-foot setback from the outside boundary of all public highways.

Court litigation developed in Ohio when the Ohio Turnpike Commission, in acquiring land for the turnpike, attempted to include a provision in their contracts which restricted the use of the remaining lands fronting on the turnpike so as to prohibit outdoor advertising. The Supreme Court held, in Ellis v. Ohio Turnpike Commission, 120 N. E. (2d) 719 (1954), that no express authority was given to the Turnpike Commission to deny landowners the use of their remaining lands

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<sup>14</sup>Supra, p. 105.    <sup>15</sup>Supra, p. 107.

fronting on the turnpike for the erection of outdoor advertising structures and that the provision was therefore void. Parks and Parkways.--Litigation concerning the setback of billboards from parks and parkways has followed the now familiar pattern. The early cases did not accept setback requirements as a reasonable use of the police power. Kansas City Gunning Advertising Co. v. Kansas City, 240 Mo. 659, 144 S. W. 1099 (1912) is one instance in which a 100 foot setback from a park or boulevard was held invalid. Also, in Chicago v. Gunning System,<sup>16</sup> and Haller Sign Co. v. Physical Culture Training School, 94 N. E. 920 (1911) similar regulations were rejected. More recently the courts have approved the same types of regulations. In General Outdoor Advertising Co. v. Indianapolis, 202 Ind. 85, 172 N. E. 309 (1930), an ordinance prohibiting signs within 500 feet of any public park, parkway or boulevard was upheld. Another related case is General Outdoor Advertising Co. v. Dept. of Public Works,<sup>17</sup> where a statute was upheld which prohibited signs within 300 feet of a public park.

Intersections.--From a review of the court cases which considered the setback of outdoor advertising structures from intersections, it is apparent that such regulations are infrequently questioned. Evidently the only reason for questioning such a regulation is that the restriction is unduly

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<sup>16</sup>Supra, p. 117.    <sup>17</sup>Supra, p. 105.

restrictive and unreasonable. Only three cases were found, and in each case the approval of the setback requirement was incidental to other considerations. The first case was General Outdoor Advertising Co. v. Dept. of Public Works,<sup>18</sup> where a regulation was approved which restricted billboards within 150 feet of intersections where the majority of the buildings in a block are residential. In the second case, Kelbro v. Myrick,<sup>19</sup> the court sustained a regulation which prohibited outdoor advertising structures within 300 feet of a highway intersection. Finally, in Ackerman Fuel Oil Co. v. Board of Adjustment of the Borough of Paramus, 136 N. J. L. 93, 54 A. (2d) 661 (1947) the court upheld an ordinance providing for a 200-foot setback from intersections in business and industrial districts.

Spacing of Structures.--The spacing of structures has been questioned infrequently by the courts. Evidently the decision in St. Louis Gunning Advertising Co. v. St. Louis,<sup>20</sup> has set a precedent which later courts have not seen fit to question. In this particular decision, an ordinance was upheld which prohibited billboards located less than six feet from any other building or side line of the lot, nearer than two feet from any other billboard and required a clearance between the ground and board of four feet. It would seem logical to assume that where similar provisions are enacted with proper legis-

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<sup>18</sup>Supra, p. 105.    <sup>19</sup>Supra, p. 107.    <sup>20</sup>Supra, p. 114.

lative authority and appear to have reasonable requirements, the regulation will not be questioned.

#### Height and Area

In 1900 the Court of Appeals of the State of New York sustained an ordinance prohibiting the erection of billboards more than six feet in height, without the consent of the council. In this particular case, City of Rochester v. West, 29 App. Div. 125, 51 N. Y. S. 482, 58 N. E. 673, the court stated: "If the defendant's authority to erect billboards was wholly unlimited as to height and dimensions, they might readily become a constant and continuing danger to the lives and persons of those who pass along the street. . ." This decision set the pattern for the earliest cases which upheld regulations that required signs over a certain size to have a permit. Similar decisions were handed down in Whitmier and Filbrick Co. v. City of Buffalo, 118 Fed. 773 (1902) and Gunning System v. City of Buffalo, 77 N. Y. S. 987 (1902).

Where the statutes and ordinances prohibited signs over a certain size, the early courts usually ruled them invalid. Passaic v. Patterson Bill Posting, Sign Painting and Advertising Co.;<sup>21</sup> People v. Wolf;<sup>22</sup> and Curran Bill Posting Co. v. Denver,<sup>23</sup> are three of the earliest cases which invalidated such ordinances. Then in St. Louis Gunning Advertising Co. v. St. Louis,<sup>24</sup> the trend changed when the court upheld an ordinance limiting billboards to a height of 14 feet

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<sup>21</sup>Supra, p. 117.    <sup>22</sup>Supra, p. 113.    <sup>23</sup>Supra, p. 116.

<sup>24</sup>Supra, p. 114.

above the ground. Signs and billboards were limited to 14 feet in height and a 400 square foot area by an ordinance upheld in St. Louis Poster Advertising Co. v. St. Louis.<sup>25</sup>

A 500 square foot limitation on the area of signs and billboards was approved in General Outdoor Advertising Company v. Dept. of Public Works,<sup>26</sup> in 1935. Other recent cases providing similar decisions are: People v. Norton, 108 Cal. App. 761, 288 P. 33 (1930) where the court upheld a 12 square foot restriction in a residential district and New Orleans v. Pergament, 198 La. 852, 5 So. (2d) 129 (1941) where the court upheld an eight square foot restriction in a historic section of New Orleans, Louisiana. The latest case ruling on similar provisions is O'Melia Poster Advertising Co. v. Morristown, New Jersey, 1953, citation unknown. This case approved two ordinances which limited accessory-use advertising signs to a 20 foot height and 30 square foot area, billboards on the ground to 10 feet in height and a 100 square foot area, prohibited roof signs completely where they have solid surfaces and limited ground signs to one sign per each 75 feet of frontage.

It seems obvious from the trend in these decisions that the courts are willing and prepared to uphold regulations restricting the area and height of signs and billboards. Only where legislative authority is lacking or the requirement is grossly unreasonable are the courts likely to invalidate these regulations.

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<sup>25</sup>Supra, p. 104.    <sup>26</sup>Supra, p. 105.



## Materials, Weight, Illumination, and Structural Requirements

There is no question about judicial opinion with regard to the materials, weight, illumination and structural requirements of outdoor advertising signs. The general attitude of the courts was presented clearly in Haskell v. Howard, 269 Ill. 550, 109 N. E. 992 (1915) where it was stated that the city had the right to regulate the use and construction of billboards. The extent to which the courts are willing to uphold such requirements can be demonstrated by the decisions in three cases. In Cream City Bill Posting Co. v. Milwaukee,<sup>27</sup> the court approved an ordinance which required all outdoor advertising to be designed and built so as to withstand a 40 pound per square foot wind pressure with a safety factor of four. The same ordinance further required all signs within the fire limits to be constructed of incombustible materials and to be fastened securely with rust-free fasteners.

In Horton v. Old Colony Bill Posting Co., 36 R. I. 507, 90 A. 822 (1914) an ordinance with extensive structural requirements was upheld. In general the ordinance required that all illuminated billboards must be constructed of incombustible materials, with the electrical apparatus installed according to the rules and requirements of the Insurance Association of Providence. It further provided that all signs and billboards

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<sup>27</sup>Supra, p. 117.

would be securely anchored and fastened and constructed so as to give firemen reasonable access from the street to the roof, without obstructing the fire escape. Plans and specifications for all new outdoor advertising structures must be filed with the building inspector whose approval is necessary to obtain a permit. Finally, no structure is allowed which is dangerous to the public; and when such a structure is discovered, the building inspector is authorized to require its immediate improvement or removal.

In the case of Berkau v. Little Rock, 174 Ark. 1145, 298 S. W. 514 (1927) an ordinance was sustained which provided that no hanging sign could be erected, other than an electric sign of all steel construction and weighing less than 400 pounds.

It is obvious from the decisions reviewed that the courts consider the safety of the public to be of primary importance in any outdoor advertising regulation. There is no doubt that any reasonable regulation would be upheld as promoting the safety and general welfare of the public.

#### Non-Conforming Uses

The court decisions reviewed do not indicate a definite trend in handling non-conforming outdoor advertising structures. Some courts have held that existing structures could not be removed unless they were determined to be nuisances. It is generally understood that more than a legislative declaration is needed to classify outdoor advertising structures as

nuisances. Therefore, the non-conforming signs have been allowed to remain. Cases which have overruled provisions for the elimination of non-conforming signs are: Whitemier and Filbrick Co. v. City of Buffalo,<sup>28</sup> Standard Bill Posting Co. v. Newburgh, 137 N. Y. S. 186 (1912), Town of Greenburgh v. General Outdoor Advertising Co., 109 N. Y. S. (2d) 826 (1951), and Illinois Life Insurance Co. v. Chicago, 244 Ill. App. 185. In another case, United Outdoor Advertising Co. v. Raritan,<sup>29</sup> the court ruled invalid a provision requiring the removal of non-conforming signs within two years from the effective date of the ordinance. However, the decision was made because the zoning enabling law did not provide for the elimination of non-conforming uses.

Other court cases have upheld regulations requiring the removal of non-conforming outdoor advertising structures. The decision in General Outdoor Advertising Co. v. Dept. of Public Works,<sup>30</sup> required the removal of thousands of non-conforming billboards in Massachusetts. Woodward Ave. v. Wolff, 312 Mich. 352, 20 N. W. (2d) 217 (1945); and Kansas City Gunning Advertising Co. v. Kansas City<sup>31</sup> are other cases which sustained similar provisions. In another case, Goodrich v. Selligman, 298 Ky. 863, 183 S. W. (2d) 625 (1944), the court ruled void a permit which was issued a signboard owner to replace his old signs. The ordinance in question allowed non-

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<sup>28</sup>Supra, p. 121.    <sup>29</sup>Supra, p. 107.    <sup>30</sup>Supra, p. 105.

<sup>31</sup>Supra, p. 119.

conforming signs to remain only as long as no structural alterations were made.

### Esthetic Considerations

There seems to be a definite trend to accept esthetics as a consideration in the regulation of outdoor advertising. Almost without exception the early cases invalidated ordinances which appeared to be based primarily on esthetic considerations. When lacking some other basis, justifiable under the police power, the regulations generally were not upheld. The old decisions which adopted this viewpoint were Passaic v. Patterson Bill Posting, Advertising and Sign Painting Co.;<sup>32</sup> and Varney and Green v. Williams.<sup>33</sup> However, this early policy has undergone a change. Gradually a few courts begin grudgingly to accept esthetics as a factor to be considered in outdoor advertising regulations. Subsequently, esthetics were accepted as a consideration, providing there was some other basis for the regulation. In Liggett's Petition,<sup>34</sup> the court said that esthetics may be a factor for consideration in adopting a police power regulation but it cannot be the primary factor. St. Louis Poster Advertising Co. v. St. Louis,<sup>35</sup> and Murphy, Inc. v. Town of Westport<sup>36</sup> generally held that where a regulation had a reasonable justification for the exercise of the police power, the fact that esthetic considerations

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<sup>32</sup>Supra, p. 117.    <sup>33</sup>Supra, p. 109.    <sup>34</sup>Supra, p. 105.

<sup>35</sup>Supra, p. 104.    <sup>36</sup>Supra, p. 106.

played a part in its adoption would not affect its validity.

The interpretation of the courts has undergone further change and is now even more broad. Today cases are upheld which at one time would have been declared invalid. In General Outdoor Advertising Co. v. Indianapolis,<sup>37</sup> the court said:

Under a liberalized construction of the general welfare purposes of State and Federal Constitutions there is a trend in the modern decisions (which we approve) to foster, under the police power, an esthetic and cultural side of municipal development - to prevent a thing that offends the sight in the same manner as a thing that offends the senses of hearing and smelling. . .

Then in General Outdoor Advertising Co. v. Dept. of Public Works,<sup>38</sup> the court stated, in upholding an outdoor advertising regulation, that it was not necessary to base the regulation on public safety or the protection of travelers and that considerations of taste and fitness may be the basis for granting or denying permits for advertising devices.

Continuing the same trend, in Monterey County v. Bassett,<sup>39</sup> an ordinance was upheld which extended the zoning principle to rural areas to protect the natural beauty of the landscape. An ordinance was judged to be valid in Commonwealth v. Trimmer, 53 Dauphin Rep. 91 (Pa. 1942) based solely on esthetic considerations. The Supreme Court of Vermont in Kelbro, Inc. v. Myrick,<sup>40</sup> held that billboards may be regulated

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<sup>37</sup>Supra, p. 119.    <sup>38</sup>Supra, p. 105.    <sup>39</sup>Supra, p. 105

<sup>40</sup>Supra, p. 107.

or excluded from the area adjacent to highways on esthetic considerations alone.

There are two more recent cases which further reinforce this trend. In City of New Orleans v. Levy, 64 So. (2d) 798 (1953) the court upheld the right of a city to regulate signs as an architectural control. Then in Merritt v. Peters,<sup>41</sup> the court upheld a regulation limiting the size of commercial signs and specifically stated that the factors of health, safety, and morals were not involved but that the regulation could be upheld on esthetic grounds alone.

These decisions reflect a trend towards complete acceptance of the esthetic as a basis for outdoor advertising regulations. However, the decisive case which will settle the constitutionality of esthetics as a proper basis for exercising the police power (as Euclid v. Ambler Realty Co., 272 U. S. 365, 47 S. Ct. 114 (1926) did with respect to the constitutionality of zoning) has not occurred.

In the majority of cases in which the courts have ruled on esthetics, the basis for the decision has been either complete acceptance or rejection of the esthetic as a valid consideration. Seldom has a court accepted the validity of esthetics and then ruled on the reasonableness of a specific provision, as in Merritt v. Peters.<sup>42</sup> Here the court ruled on a provision which regulated, not prohibited, outdoor adver-

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<sup>41</sup>Supra, p. 111.    <sup>42</sup>Supra, p. 111.

tising signs. In the future if regulations could be adopted which provided reasonable standards for the location, setback, size and number of outdoor advertising structures, then perhaps the courts will be able to accept the esthetic as a valid basis for outdoor advertising regulation.

## CHAPTER VI

### SUMMARY AND RECOMMENDATIONS

Outdoor advertising and its ensuing regulation have come a long way since the early days of their existence. The business has developed from infancy into a multi-million dollar enterprise that has taken its place as an integral part of the nation's mass production and marketing system. At the same time, the regulatory tools have advanced from weak and ineffective laws to modern comprehensive measures which are sometimes very restrictive. It is not unusual for up-to-date outdoor advertising regulations to include provisions for licensing and permits; setbacks; electrical and structural requirements; and area, height, spacing, number and location restrictions. Some of these measures are customarily provided in a separate outdoor advertising ordinance while others are found in a zoning ordinance. Some controls may be exercised by land acquisition through gift or purchase or by condemnation under the power of eminent domain.

All types of outdoor advertising are not subject to controversy. In some instances adequate methods of regulation have been established and controversy has all but been eliminated. Accessory-use signs are a case in point. They are relatively simple to regulate, the provisions concerning their use are generally understood and accepted; and, as a result,



accessory-use outdoor advertising regulations are infrequently questioned in court. The primary consideration is for the regulations to provide adequate standards of safety and appearance through regulations that are reasonable and not arbitrary.

The separate-use outdoor advertising structures are not so easily dismissed, although here, too, there are substantial areas of agreement. It is generally recognized that outdoor advertising may properly be prohibited in residential areas. There is increasing acceptance of outdoor advertising regulation in neighborhood shopping centers. However, a solution which completely excludes outdoor advertising structures from neighborhood shopping centers would not generally be acceptable to the outdoor advertising industry.

Separate-use outdoor advertising structures are usually permitted in other business districts and in industrial districts. Here the primary concern is for regulations that provide structural standards and an adequate inspection system which will insure the safety of the public. However, the increasing acceptance of esthetic considerations in sign and billboard regulations may lead to the adoption of provisions which are designed to guide the development and appearance of outdoor advertising in business and industrial areas also.

One of the thorniest problems is presented by advertising signs along rural highways where the abutting property has been zoned for agricultural uses. In some jurisdictions they have been eliminated, while in others they are permitted

anywhere along the roadside. The complete elimination of outdoor advertising from specially designated scenic or historic portions of rural highways or from portions that are zoned for residential use appears to be reasonable. Signs are normally permitted in business sections along rural highways. Where the signs are prohibited on other sections of rural highways, such as those zoned for agriculture, the "esthetes" are contented but the advertising companies feel that they are being unreasonably restricted. Where signs are permitted without any regulation, the roadside is likely to become cluttered with a multitude of signs of all sizes, shapes and descriptions, particularly along the principal highway approaches to cities.

The problem in this situation is likely to be the problem of "random signs" rather than those erected by responsible outdoor advertising companies. In the absence of regulations, the random sign appears overnight, plastered on the fronts of buildings, tacked onto fences and trees, painted on stores or erected on flimsy poles. Many will be broken down or otherwise in a state of disrepair and will have long since served their temporary purpose. The owners of such signs are frequently irresponsible and in many cases may not realize the problem they are creating. Some form of regulation is needed which will strictly regulate the random sign but at the same time not prohibit a reasonable number of billboards from locating along appropriate portions of rural highways.

The solutions offered so far have, for the most part, not been acceptable to both the advertising companies and the public. Where they have pleased one they have offended the other. The fault appears to be that the regulatory measures have taken the extremes. The measures proposed have either allowed outdoor advertising anywhere or almost nowhere along the roadside. Without regulations which more nearly solve the problem, progress has been negligible. A middle course seems to be indicated.

For the courts to accept an outdoor advertising regulation as reasonable, there must be a sound basis, through stated standards, on which to make a decision. The popularly phrased bases: health, safety, morals, and general welfare, when applied to outdoor advertising, are not sufficiently specific to be helpful. There does not seem to be any relation between health and outdoor advertising unless light, air and open space are considered. Safety has been proved to be a factor only at intersections, on the inside curves of highways, where outdoor advertising may be confused with highway directional signs and signals, where it constitutes an obstruction to fire fighting equipment and personnel, or where the public is endangered by poorly constructed or maintained signs. Morals are not involved unless the advertising copy is improper or the billboards form a hiding place for illegal activities. The general welfare does not seem to be injuriously affected by outdoor advertising unless it lowers property values

or offends the esthetic senses of a majority of the people.

Outdoor advertising regulations must be sustained on the basis of: (1) the preservation of light, air, and open space between groups of advertising structures and between advertising structures and buildings; (2) the preservation of the safety of the public in those areas which have proved to be hazardous when outdoor advertising was permitted without regulation; (3) promoting the orderly development of privately owned land; (4) maintaining or improving the general community appearance; and (5) preserving historic monuments and areas of unusual scenic beauty.

Judicial opinion with regard to outdoor advertising has changed considerably over the years. Where a great many of the early outdoor advertising regulations were invalidated by the courts, the same regulations are now accepted, occasionally being based on legal fiction but more likely being based on safety, esthetics, and a need for light, air, and open space. The courts have upheld the regulation of both accessory-use and separate-use outdoor advertising structures. Separate-use signs may be prohibited or strictly regulated in residential and neighborhood shopping areas. The same signs are usually permitted in other business districts and in industrial areas. The regulation of all signs is generally accepted if there is proper legislative authority and if the regulations appear to be reasonable and not arbitrary.

### Special Problem Areas

Throughout this report certain areas of outdoor advertising regulation have been identified as needing further attention. Each of these will be discussed separately. However, no significance is attached to the order in which taken. The importance of any one of them is likely to vary with the particular jurisdiction.

Neighborhood and roadside shopping areas.--Retail shopping centers in suburban areas of the city and roadside shopping centers cater primarily to patrons who come by automobile. Each has a recognized place in our modern economic system. The accessory-use business signs are usually not a problem; but where they have become a problem, the courts have been willing to uphold their reasonable regulation. However, judicial decision has gone even further in upholding the regulation of the separate-use billboard or poster panel in these locations. There is a recognizable trend for the courts to uphold regulations prohibiting these structures in neighborhood or roadside shopping centers because these centers lie in the heart of residential districts. Because outdoor advertising is a legitimate business and not a nuisance, the trend towards absolute prohibition seems questionable.

A better solution would seem to be one in which the purposes of outdoor advertising are considered in relation to their service to the community. Outdoor advertising serves

at least two purposes in shopping centers. It keeps certain products before the public eye and, at the same time, performs a reminder function at the point of sale. Manufacturers evidently feel that this form of advertising is necessary to keep the mass production and marketing process at a high level or the media would not be used. If these purposes are accepted as legitimate reasons for the outdoor advertising industry, then an attempt should be made to regulate their use so as to be compatible with their public service rather than to seek the absolute prohibition of them.

In the suburban shopping center it appears desirable to prevent the location of outdoor advertising signs in close proximity to nearby residential structures. Furthermore they should not be allowed in such numbers that they dominate the shopping center. Regulations for the location, lighting, size, spacing and height of the structures should accomplish the desired objectives.

In the roadside shopping center the considerations would be somewhat different. While the problems discussed for the suburban shopping center are still pertinent, there is an additional factor. The advertising sign must be viewed by automobile passengers traveling with considerable speed who, in many cases, are not familiar with the area. If the signs are limited to the exact business area, the persons traveling along the highway may not have sufficient time to decide whether they wish to stop for meals, produce, or overnight lodging, for

example. Therefore it would seem desirable to provide some method of locating signs within a reasonable distance of the retail center.

It is recommended that both accessory-use and separate-use outdoor advertising signs be permitted in both neighborhood and roadside shopping centers, subject to regulations which will make their use acceptable. The following is a suggested list of provisions which, if adapted to the particular needs of a community and combined with suitable regulations for accessory-use signs, should provide for the acceptable use of outdoor advertising structures in shopping centers:

1. No separate-use outdoor advertising signs to be placed within 300 feet of any residence unless the signs are completely obscured from view from within the residential area.

2. No separate-use advertising signs to be placed within 500 feet of any residence where the illuminated face of the sign is clearly visible from the residential area at night.

3. No flashing or intermittent lighting effects to be used where they are visible in any way from a residential area.

4. The number of billboards or poster panels to be limited to one standard size sign (12 feet by 25 feet or reasonably similar dimensions) per each 50 feet of building frontage where the primary use of the build-

ing is for business purposes. The front of each store will be considered to be the facade facing the main portion of the shopping center and in no case more than one facade.

5. Outdoor advertising signs will be permitted in agricultural districts within a radius of one mile of any roadside shopping center, subject to the other provisions of the ordinance or law.

6. Ground signs to be limited to 15 feet in height, roof signs to 30 feet in height as measured from the ground beneath the structure.

7. No signs to be permitted within 150 feet of any intersection in a suburban area and within 300 feet of any intersection on a rural highway. However the distance from the intersection should always be equal to or greater than the existing setbacks of the front of all principal buildings within the area.

8. The construction of any sign should be subject to the provisions of the building and electrical codes of the city or county. If the governing body has no codes or if the sign is in an unincorporated area, the structural and electrical provisions should be outlined in a local sign ordinance.

Roadside areas.--The roadside problem with regard to outdoor advertising is primarily concerned with the separate-use type of sign. It will be recalled that the outdoor advertising



companies consider agricultural land to be a business use and therefore an appropriate place for their signs and billboards. Agriculture, as the term is generally understood, is not considered a business in the same sense that a drugstore or a shoe manufacturing plant is. While there is a business function carried out on farms, their primary use would seem to be in a different category. It should also be remembered that all businesses are not necessarily permitted in any one type of business district. For example, manufacturing plants, dairies, dry-cleaning plants, wholesale houses and many other similar business establishments are usually prohibited from neighborhood shopping areas. In the same manner, types of business, other than farming, are normally excluded from an agricultural district. So there is little validity for the contention that outdoor advertising is necessarily an appropriate use at any location within an agricultural area.

At the same time, it should be pointed out that outdoor advertising structures have characteristics which are different from those of many other types of business. Most important, billboards along a rural highway do not attract customers to their particular location. As a result, they do not cause automobiles to enter and leave the highway, they do not create parking or truck loading problems, and they do not cause congestion by the intermingling of automobiles and pedestrians.

It has been observed that the separate-use outdoor advertising signs along the roadside are of three types: (1) the standard size poster panels or billboards as used by the organized outdoor advertising companies; (2) signs which may or may not be of a standard size and which are erected by individual companies not belonging to the organized industry; and (3) the "random signs" which may be distributed and erected by business concerns, both large and small as well as by individual owners. The problems created by these signs are multiple. In some cases too many signs will be erected in a short distance along the highway. The signs may be of so many different sizes and shapes that they create an appearance of clutter, confusion and disorder. The content of the signs may be outdated or the service advertised may even be out of existence. They also may be inadequately maintained. Lastly, the signs may be located in an area with obvious scenic value where the use of any signs would be entirely inappropriate.

It seems apparent that the regulations needed to correct these deficiencies are not the same as would be needed for other businesses. To control the use of outdoor advertising along the roadside by the use of the standard type of zoning provisions for other types of business uses, in light of this discussion, would be a mistake. The differences appear to be distinctive enough to warrant consideration of the idea that an individual set of regulations are needed more

in keeping with the peculiar characteristics of the outdoor advertising sign.

It is recommended that outdoor advertising be permitted along the roadsides. A suggested list of measures, which should be combined with other appropriate provisions discussed elsewhere in this report, is given below:

1. A comprehensive program should be developed to regulate roadside signs including provisions for the number, size, location of signs, and the licensing of operators, as well as the usual permit, structural, and lighting requirements.

2. A coordinated program to develop and to designate appropriate scenic areas should be initiated. Within the scenic areas, no advertising signs are to be allowed. These areas should have readily recognizable scenic values which are worth preserving and should not include areas where the primary scenic view is merely wooded areas or meadowlands adjacent to the highway. Examples of scenic areas are: parks, forests of unusual beauty, improved dual-lane approaches to cities, cemeteries, golf courses, recreation areas and lakes.

3. The number and location of signs are to be regulated by a lineal-sign-density requirement as follows: (a) A density of 4 signs per mile, computed by including both sides of the road, to be

permitted along the roadside subject to the other provisions of this ordinance. (b) A density of 6 signs per mile to be permitted if signs are in clusters of 2 or 3 but in no case may there be more than 3 signs in any 1000-foot sector.

4. All ground signs are limited to a height of 15 feet measured from immediately beneath the structure.

5. All signs, other than traffic information or directional signs shall be set back at least 25 feet from the highway right-of-way.

6. Maximum sign area for any one sign to be 600 square feet.

7. Separate-use sign owners must be licensed and permits and permit fees will be required for all signs.

8. Signs of a temporary nature and under a 60 square foot size will not require individual permits, but a bond shall be posted to insure proper removal.

9. In cases of violation, a notice will be sent to the owner and advertiser and if the violation is not corrected within a reasonable period of time, a fine will be levied against both the owner and advertiser.

### Esthetic Considerations

Throughout this report the esthetic has been pointed out as playing an increasingly important part in outdoor advertising regulation. Then, in the last chapter, it was stated that recently the courts had begun to accept regulations based solely on esthetic objectives. It was in consideration of this fact that the conclusion was drawn that outdoor advertising in commercial and industrial areas may soon be subject to esthetic regulation.

Equitable and reasonably effective esthetic regulations are difficult to devise and more difficult to enact. There is always the temptation to prohibit where prohibition may not be feasible or necessary. In addition, the likelihood of the courts' upholding esthetic regulation, even in sections of the country where it is accepted, will certainly depend upon the legislatures' or councils' spelling out in detail the standards to be included. The regulations will need to be easily understood, direct, and not subject to unlimited discretion at the hands of the administrative official or body.

In the problem areas considered so far, suggestions for regulations have been included where they were deemed appropriate. There are at least three other problems that need special attention, which are primarily of an esthetic nature: (1) outdoor advertising along an expressway; (2)

the random sign erected on a store front as an accessory-use sign and (3) the separate-use sign in the central business district and in commercial and industrial areas.

Signs along expressways.--When cities have been confronted with the problem of outdoor advertising located on lands adjacent to expressways, the usual solution has been to enact an ordinance prohibiting separate-use signs either: (1) within view of any point on the expressway or (2) within a specified distance (usually 300 to 500 feet) of the expressway right-of-way. The basis for such a regulation, in light of the discussion in Chapter Two, is primarily an esthetic one. Any safety hazard or disruption of orderly community growth could be overcome with a lesser measure than absolute prohibition and certainly would not be more affected by separate-use signs than by accessory-use signs.

It is understandable that the municipalities and states which build these expressways are desirous of preserving their beauty and open uncluttered appearance. Governmental officials justly feel that such huge expenditures of money should be protected from any harmful influences, of which they consider outdoor advertising to be one.

Because of the high traffic volume, resulting in a considerable number of potential outdoor advertising viewers, the lands adjacent to the expressway are exceptionally valuable to advertisers. In such locations, the outdoor medium reaches its greatest number of people. It is only natural

that outdoor advertising companies would attempt to take advantage of this market.

The objection to advertising signs along an expressway probably stems in large part from the appearance created when too many signs are seen in a short period of time, or where the signs are of a very ordinary appearance and do not blend into the setting created by a landscaped expressway. The scenic quality of an expressway stems from its simple, clean-cut lines which are usually blended with appropriate landscaping along its sides. Where a community has strived to create this kind of picture, at least certain types of signs do seem out of place.

The advertising companies could do much to aid their own cause by adopting rigid standards for the selection of sign locations and then erecting only unusually attractive structures. In this manner, outdoor advertising could actually contribute to the general appearance of the expressway and its bordering lands, and at the same time enhance the value of the sign locations.

The answer to this problem appears to be a compromise in which advertising signs are permitted but only in limited quantities. Where the expressway passes through residential areas the problem is already solved because outdoor advertising is generally a prohibited use. This leaves business and industrial areas to be regulated where, for the most part, the signs are located on the walls and roofs of buildings.

In consideration of the scenic values of an expressway, landscaped in the accustomed manner, it would seem appropriate to study the possibilities of prohibiting from view on the expressway the painted wall signs, which generally are of a very ordinary quality and add little to the appearance of a community.

It is recommended that outdoor advertising be permitted in limited quantities along an expressway, subject to the following measures which, when combined with provisions discussed elsewhere in this report, should give adequate control of the medium:

1. All signs to set back at least 25 feet from the right-of-way, except when located on a building erected at a lesser distance.
2. Ground signs to be limited to 15 feet in height above the ground on which they are located and to 600 square feet in area.
3. Painted wall signs to be prohibited from any location where they are placed to be viewed primarily from the expressway.
4. Outdoor advertising roof structures to be limited to 50 feet in height above the level of the roof directly under the sign and subject to provisions discussed elsewhere in this report.
5. Wall signs, other than the painted type, to be limited to a height of 30 feet above the ground



and to a 600 square foot area.

6. Accessory-use signs to be limited to one per building fronting on the expressway with their area determined by the ratio of two square feet per foot of building fronting on the expressway.

7. All signs erected by outdoor advertising companies (separate-use) to be limited to a density of five per mile of expressway, measured along the approximate center line of the expressway.

Random signs.--By definition, the random sign has been placed in the separate-use category. However, under certain circumstances, it may take on the characteristics of an accessory-use sign. For example, compare the use of a small soft drink sign on the front of a grocery store and on the front of an automobile repair garage, both having been placed beside the name of the proprietor. The soft drink sign on the front of the grocery store advertises a product sold on the premises. The sign is advertising on the front of a store which sells thousands of products that are generally known to be sold in such establishments.

The case where the same sign is erected on an automobile repair garage is somewhat different. Here the soft drink sign indicates that a product is sold which is not normally thought to be sold on such premises.

From the standpoint of appearance, business areas are not enhanced or improved by the use of many small signs ad-

vertising individual products, especially when they are erected on a permanent or semi-permanent basis. When many of these signs are displayed in a concentrated area, they create a cluttered, haphazard appearance and they have a blighting effect on the surrounding area. It would vastly improve the appearance of even the older business developments to restrict the use of these signs. The following recommendations are made for the control of random signs placed on the fronts and sides of business structures:

1. Random signs are to be prohibited on the front or sides of any business structure where they advertise a product which is not generally known to be sold in such establishments and where they perform their primary function as a separate-use sign.

2. Random signs, located on the fronts or sides of businesses where they advertise a product generally known to be sold in such establishments, are permitted, providing the aggregate area of all such signs does not exceed 25 per cent of the total permitted sign area of the establishment as provided for elsewhere in this ordinance.

3. Random signs shall not exceed three in number at any one location.

Separate-use signs in commercial and industrial areas.--In

some cities the separate-use sign in the central business district and in commercial and industrial areas needs little

or no attention. At the same time, there are areas which could be improved tremendously by the right kind of outdoor advertising regulation.

The answer to this problem would render a valuable service to any community. Unfortunately, no answer is readily apparent. In an effort to move in that direction, the problem will be examined in more detail to identify the harmful influences and at least develop a few possibilities for further exploration.

The billboard, painted wall and spectacular are familiar objects in the central business district and in the commercial and industrial areas of most cities. Usually they can be found in the older more firmly established parts of town, although they are not limited to these areas by any means. Each has a more or less typical location. The spectacular is usually mounted where it overlooks an approach to the downtown area or a main artery. The billboard will be located on the roof of buildings up to two or three stories in height or on the side walls of buildings next to open spaces such as parking lots. The painted wall sign is most frequently seen on the sides of buildings located on side streets which intersect main arteries.

One of the greatest objections to the billboard and spectacular is the clumsy and frequently unsightly superstructure for the sign. This problem has been solved for ground signs by one outdoor advertising company which has incorporated

a new structural design requiring three upright posts instead of the usual braced frame construction. Possibly similar structures could be designed for roof signs and still come within the requirements of the building code.

Another objection which is more difficult to evaluate is the general appearance created in an area where there are too many roof signs or where too large a sign has been erected. Where these signs are erected in an older part of the community, there is usually such a conglomeration of building sizes, shapes, designs and colors and such a variety in the appearance and maintenance of the buildings that it would be difficult to say that outdoor advertising signs detracted from the general appearance of the area. Looking at this problem from the other point of view, there is still a moral obligation to attempt to improve the appearance of such areas when at all possible. The answer may be to limit the number of signs to those in existence until such time as an area is rebuilt or redeveloped when more stringent controls could be enacted.

One other objection is to the poster panels, painted wall signs and spectaculars which are so large in relation to the wall or building on which they are erected that they tend to overpower the viewer. Of course this is an effect which the outdoor advertising companies strive for because these signs are more attention demanding. From the public point of view, however, these outdoor advertising structures may be

overbearing and detract from the appearance of an area.

There seem to be a few openings to attack the problem of outdoor advertising structures being out of proportion with a general community area. First, the distance from the average viewer's location to the sign in question affects his attitude towards the sign. Where the distance is short before the sign is detected, the viewer is more likely to object to a large structure. Where there is sufficient distance between the optimum viewing point and the sign, the sign does not appear overbearing and should not be objectionable.

To prevent the erection of signs that are too large in relation to buildings on which they are erected, it may be possible to work out a limiting ratio between the overall dimensions of the sign and the building. For example, if a limiting ratio of one-fourth was set, a building with general overall dimensions of 80 feet in height and 60 feet in width (from the direction in which the sign is facing) would be limited to signs not exceeding 20 feet in height and 15 feet in width. The limiting ratio need not be arbitrary because theories have been advanced relating to proportion and size and a reasonable figure could be determined.

#### An Outdoor Advertising Program

The developments in the field of outdoor advertising regulation up to the present time may be characterized as

having taken place on a battleground. The outdoor advertising companies have been opposed by the governing bodies of both state and local governments. The opposing factions have believed that they were taking a reasonable course of action, but in nearly every instance the results have not pleased either side.

Where a governing body has been able to pass a restrictive regulation, it usually has passed in a compromise form. Even then the proponents of strong regulations have not been able to relax because the next session of the legislature or council was more than likely to receive an amending bill.

The outdoor advertising companies have been in much the same predicament. In the final analysis, what it has meant is that the outdoor advertising industry has never known what to expect in the way of regulation. In most instances, the regulations proposed have been drawn with the obvious intention of restricting outdoor advertising to the point where it was no longer profitable in many locations. The advertising concerns have been left with little choice other than to fight such regulations.

The time has come when the opposing sides in this conflict should lay down their weapons and unite in a serious effort to work out their differences. Intelligent men can see that the extremes in either direction are doomed to failure. What is needed is a lot of hard work to identify the acceptable areas of outdoor advertising location and regulation and

to work out a reasonable set of standards to govern their future use. Out of such decisions should come a comprehensive program of action. The end product must be an intelligent program for the guidance of the outdoor advertising industry in harmony with the basic objectives of good community development. Only when this is obtained, can the opposing sides be expected to abide by their decisions and to begin to work together.

## ABBREVIATIONS



## LIST OF ABBREVIATIONS

App. Div. . . . .	Appellate Division Reports, New York Supreme Court
Ark. . . . .	Arkansas
A. . . . .	Atlantic Reporter
Cal. App. . . . .	California Appeals Reports
Cal. . . . .	California Law Reports
Colo. . . . .	Colorado
Co. . . . .	Company
Conn. . . . .	Connecticut
Corp. . . . .	Corporation
Fed. . . . .	Federal Reporter
Fla. . . . .	Florida
Ill. . . . .	Illinois
Inc. . . . .	Incorporated
Ind. . . . .	Indiana
Ky. . . . .	Kentucky
Kan. . . . .	Kansas
La. . . . .	Louisiana
Mass. . . . .	Massachusetts Reports
Mich. . . . .	Michigan
Misc. . . . .	Miscellaneous Reports (New Jersey, New York)
Mo. . . . .	Missouri
N. J. . . . .	New Jersey

N. J. L. . . . . New Jersey Law Reports  
N. Y. . . . . New York  
N. Y. S. . . . . New York Supplement  
N. E. . . . . Northeastern Reporter  
N. W. . . . . Northwestern Reporter  
Ohio App. . . . . Ohio Appeals Reports  
Op. . . . . Opinions  
P. . . . . Pacific Reporter  
Pa. . . . . Pennsylvania State Reports  
Phil. . . . . Philippine Reports  
R. I. . . . . Rhode Island  
(2d) . . . . . Second Series  
So. . . . . Southern Reporter  
S. W. . . . . Southwestern Reporter  
S. Ct. . . . . Supreme Court Reporter  
U. S. . . . . United States Reports  
Vt. . . . . Vermont  
Wis. . . . . Wisconsin

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